

(27,849)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 492.

DETROIT UNITED RAILWAY, APPELLANT,

vs.

CITY OF DETROIT ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF MICHIGAN.

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1 In the Supreme Court of the United States.

No. —.

THE DETROIT UNITED RAILWAY, Appellant,

VS.

CITY OF DETROIT et al., Appellees.

Return of Clerk of Court to Claim of Appeal in Above-Entitled Cause.

Appeal from the District Court of the United States for the Eastern District of Michigan, Southern Division.

2 The District Court of the United States, Eastern District of Michigan, Southern Division, in Equity.

#329.

THE DETROIT UNITED RAILWAY, Plaintiff,

VS.

CITY OF DETROIT et al., Defendants.

Bill of Complaint.

Stevenson, Carpenter & Butzel, Attorneys for Plaintiff.

Donnelly, Hally, Lyster & Munro, and H. E. Spalding, of Counsel.

3 To the District Court of the United States for the Eastern District of Michigan and Southern Division thereof, in Equity:

The Detroit United Railway, the plaintiff herein, respectfully shows:

(1) That said plaintiff is a corporation organized and existing under the laws of the State of Michigan, and is a citizen of said State of Michigan, with its principal office in the City of Detroit, in the Southern Division of the Eastern District of said State; that it files this its bill of complaint against and makes defendants thereto, the City of Detroit, which is a municipal corporation of the State of Michigan, and a citizen thereof, and the following named persons, who are citizens and residents of said last named State and of said Southern Division of said Eastern District of Michigan, viz: James Couzens, the Mayor of said city, Henry Steffens, Jr., the Controller of said City; and Ralph Wilkinson, William B. Mayo, and Griffith O. Ellis, members of the Board of Street Railway Commissioners of

said City of Detroit; and Charles F. Bielman, William E. Bradley, Fred W. Castator, John A. Kronk, Sherman Littlefield, John C. Lodge, John C. Nagel, David W. Simons, and James Vernor, members of the Common Council of said City, which is the legislative body thereof.

(2) That the plaintiff, whose authorized capital stock is \$15,000,000, all of which is paid in; is the owner of and operates all the street railway lines in said City of Detroit, having an aggregate
4 single track mileage of — miles, and which includes the following lines of street railway:

(a) The so-called Fort Street lines, which include, besides the trackage described in Paragraph 11 of Section I of the Ordinance of the City of Detroit in Section (3) of this Bill of Complaint mentioned (commonly known as the Fort Street lines east of Artillery Avenue), all the trackage upon Fort Street between Artillery Avenue and Dearborn Avenue, on Dearborn Avenue between Fort Street and West Jefferson Avenue, and upon West Jefferson Avenue between Artillery Avenue and the River Rouge;

(b) The Woodward Avenue line, comprising, besides the trackage described in Paragraph 12 of Section I, of said Ordinance, the trackage on said Avenue between Milwaukee Avenue and the northerly limits of the City of Detroit, so-called;

(c) A number of lines and parts of lines built under what are commonly known as the day to day agreements between said plaintiff and said City of Detroit, which lines comprise besides all of the trackage on streets described in paragraphs numbered 13 to 21, both inclusive, of said Section I of said Ordinance; certain other lines and parts of lines in said city. That the aggregate mileage of all of said day to day lines is 50.745 miles, and the aggregate mileage of such lines upon the streets described in said Paragraphs of said ordinance, including lines under construction, is 38.463 miles.

That there is attached hereto and made a part hereof, as Exhibit 1, a copy of the day to day agreement under which one of said lines was built, whose provisions are substantially the same as those of all others of said agreements.

5 That there is also attached hereto and made a part hereof, as Exhibit 2, a map which shows by appropriate designation all the said lines owned and operated by the plaintiff in said City of Detroit, and designates also, by distinctive marking, the trackage on the streets described in Paragraphs 11 and 12 of said Ordinance, and by other distinctive marking the trackage on those streets described in said paragraphs 13 to 21 of said Ordinance.

That the plaintiff also owns, either directly or through stock ownership, and operates divers lines of suburban and interurban street railroad, radiating from said City of Detroit and connected with the principal lines of urban street railway therein, and over said urban lines, affording transportation for interurban traffic to and from the business center of said City of Detroit, which interurban

lines connect said City of Detroit with many of the principle cities and towns in eastern and southern Michigan, and with the City of Toledo, in the State of Ohio, and which interurban lines have an aggregate mileage of approximately 365 miles.

That plaintiff is a tax payer in the City of Detroit, whose property therein assessed for and subject to taxation has an assessed value of upwards of \$25,000,000.00. That the bonds proposed to be issued under the terms of said ordinance will be a legal liability of the City of Detroit and as such payable out of moneys raised by taxation upon the property in said city, including the said property of the plaintiff. That on the basis of the present assessed valuation of said city the property of said plaintiff will be liable for taxes to be raised for such purpose to an amount greatly in excess of \$3,000.00.

6 (3) That on January 6, 1920, there was introduced in the Common Council of the City of Detroit an ordinance entitled "An ordinance relative to acquiring, owning, maintaining and operating a street railway system upon the surface of the streets, avenues, and public places of the City of Detroit, and within a distance of ten miles from any portion of the corporate limits that the public convenience may require for the purpose of supplying transportation to the City of Detroit and the inhabitants thereof, within and without its corporate limits, and to submit to the electors of said City of Detroit a proposition to authorize and empower the City of Detroit to acquire, own, maintain, and operate a street railway system, and to borrow money upon the credit of the City of Detroit to an amount not to exceed Fifteen Million (\$15,000,000) Dollars, by the issuance of its public utility bonds therefor, and to call a special election to vote thereon," which Ordinance was adopted by the Common Council of said City on February 27, 1920, and duly approved by the Mayor of said City, and of which ordinance a copy is hereto attached and made a part hereof, marked Exhibit 3.

That in Paragraphs 11 to 21, both inclusive, of the "Class A" lines in Section 1 of said Ordinance, there are described street railway tracks on which portions of the plaintiff's Fort Street lines, of its Woodward Avenue Line, and a number of its lines constructed under the so-called day to day agreements, are situate, as heretofore stated in the Second Section of this bill.

That on said Map, Exhibit 2, the proposed street railway lines described in said Ordinance, and the several classes thereof, A. B. and C., are indicated, as appear by the conventions attached
7 to said map; and there are also indicated, as appear by said conventions, the streets and parts of streets covered by said proposed lines, which are occupied by tracks of the plaintiff, hereinabove referred to.

That the proposition set forth in the Second Section of said Ordinance as the proposition to be submitted to the electors of the City of Detroit was submitted to said electors at a special election held on the 5th day of April, 1920, and at said election, as the results thereof were reported by the City Clerk before the canvass of the votes required by law, which canvass has not yet been com-

pleted, received the affirmative vote of over three-fifths of the electors voting at said election. That the vote on said proposition on the face of the returns of said election as reported by the City Clerk was, for the adoption of the proposition 89,285, and against the proposition 51,093, being a total vote thereon of 140,378, the percentage of the total in favor of said proposition being approximately 63.6.

That the present value of that portion of the street railway tracks, with poles and other fixed equipment now in the streets and parts of streets described in said Paragraph 11 of Section I of said Ordinance, is approximately \$1,400,000, and that the mileage of the street railway tracks in said streets and parts of streets is approximately sixteen miles of single track.

That said tracks and property are an essential part of the plaintiff's said Fort Street line, and that without them the balance of said line, which comprises approximately 13.7 miles of single track and has a value of approximately \$800,000, could not be practically operated, and would have little or no value in excess of the scrap value.

That the present value of the street railway tracks, with poles and other fixed equipment now in that part of Woodward Avenue south of Milwaukee Avenue, described in Paragraph 12 of Section I of said Ordinance, is approximately \$614,000, and that the mileage of the tracks in that part of Woodward Avenue is approximately 6.88 miles of single track; that said trackage and property in that part of Woodward Avenue is an essential part of the plaintiff's Woodward Avenue line; and that without it the balance of said line, which comprises, between Milwaukee Avenue and the northerly city limits, approximately 11.927 miles of single track, which has a value of approximately \$953,000, could not be practically operated, and would have little or no value in excess of its scrap value.

That the present value of the street railway tracks, poles and other fixed equipment now in the streets and parts of streets described in said Paragraphs 13 to 21 of Section I of said ordinance, is approximately \$3,750,000; and that the mileage of the said street railway tracks now constructed in said streets and parts of streets is approximately 29.779 miles of single track.

That said tracks and property, are essential parts of the plaintiff's day to day lines, and that without them the remainder of said day to day lines, would be greatly diminished in value.

That all of the tracks and property on all the streets and parts of streets described in Paragraphs 11 to 21, both inclusive, of said ordinance, are connected at different points with the other lines and tracks of plaintiff's system of street railways in the City of Detroit, and form an essential part thereof, and are necessary to the efficiency of said system and to the proper rendition of the service rendered thereby, and that by taking away said tracks and property said system would be disrupted and the remainder thereof would be greatly impaired in use and in value.

(4) That on the 28th day of February, 1913, the Supreme Court of the State of Michigan, in a case wherein the City of Detroit was complainant and said Detroit United Railway was defendant, commonly known as the Fort Street Case, entered a decree, a copy of which is hereto attached and made a part hereof, marked Exhibit 4, which provided that if and when the City of Detroit, by resolution of its Common Council, should so require, the defendant company should cease operating its lines in said decree described, being the lines on said streets and parts of streets which are described in paragraph 11 of said ordinance, and which are commonly known as the Fort Street lines, east of Artillery Avenue, and should remove its tracks and property from said streets, and also provided for the enforcement of the provisions of the decree by appropriate process. That no resolution for cessation of operation or removal thereof has ever been passed by the Common Council of the City of Detroit, and no attempt has ever been made by said city to obtain enforcement of the decree in said Fort Street case.

That instead of attempting to obtain enforcement of the decree in said Fort Street Case, and notwithstanding the fact that said City of Detroit claims that the street railway franchise on that part of

10 Woodward Avenue described in Paragraph 12 of said ordinance has expired, the operation of the lines covered thereby has continued, and still continues, and said City of Detroit by numerous proceedings and acts has manifested its recognition of the fact, which is a fact, that said lines east of Artillery Avenue and said Woodward Avenue line south of said Milwaukee Avenue were and are essential parts of the street railway transportation system of the city, and that the continued and uninterrupted operation thereof was and is necessary in the public interest, and necessary to preserve and promote the public welfare and the prosperity of the City.

That the population resident in the territorial limits of the City of Detroit and in its immediate suburbs, which form with it a single, industrial, commercial and residential center, exceeds one million, and is distributed over all sections and parts thereof. That said City is essentially industrial and that much the largest part of its male population is employed in great industrial plants and factories within and adjacent to the City Limits, largely at the outskirts of the city, and mostly remote from the residences of the employees, necessitating transportation of the employees to and from their homes and places of employment. That the plaintiff's street railway system is substantially the only means for transporting such employees between their homes and places of employment, and that the interruption of the operation of the plaintiff's street railway system as a single unit, or the separation therefrom of the lines and parts of lines on the streets described in paragraphs 11 to 21 of said Ordinance, would paralyze the industrial and business life of said City, throw thousands of its residents out of employment, and shut down its industrial plants and factories. That it would be im-

11 possible adequately to serve the transportation needs of the residents of Detroit by the operation of the plaintiff's lines

without the portions thereof on said streets described in said paragraphs of said ordinance, and by the separate operation as a municipal system of the lines proposed to be acquired under the terms of said ordinance. That the physical value of the property comprising plaintiff's street railway system in the City of Detroit and used for and necessary to its transportation service to the people resident therein is in excess of \$41,000,000.00.

That among the acts on the part of the City of Detroit in recognition that said Fort Street Lines east of Artillery Avenue and said Woodward Avenue line south of Milwaukee Avenue are an essential part of the street railway transportation system of the City, and that their continued operation is likewise necessary, are the following:

The agreement of August 7, 1913, being resolutions adopted on that date in acceptance of a proposition made by the Detroit United Railway; the so-called Kronk Ordinance, being an ordinance adopted by said Common Council August 9, 1918; the commencing by said City of Detroit in the Circuit Court for the County of Wayne in Chancery on June 9, 1920 of a suit against said Detroit United Railway and certain of its officers, by filing a bill of complaint containing certain statements, copy of which is hereto attached, said suit being chancery file No. 70,247, in which suit a decree was rendered, copy of which, and a copy of the resolution passed by said Common Council pursuant to, and to carry out the terms of said decree, are likewise hereto attached, said agreement of August 7, 1913, said ordinance, said extracts from said bill, said decree, and said resolution being hereto attached as Exhibits 4-a, 4-b, 4-c, 4-d, and 4-e, respectively.

12 (5) That since the expiration of the franchises on said Fort Street Lines east of Artillery Avenue determined to have expired in the decree in said Fort Street Case, there has been necessarily expended by the plaintiff, to the end that the operation of its Fort Street Lines might continue and that proper service thereon and over its said city system might be given, and with the knowledge, acquiescence, and either tacit or express approval of said City of Detroit and its officials in the reconstruction of and additions and betterments to the said Fort Street Lines the sum of \$1,497,922.82, of which amount at least \$894,036.00 was expended on said Fort Street Lines east of Artillery Avenue, and that by far the larger part, both of said total expenditure on all said lines, and of said total expenditure on lines East of Artillery Avenue, has been made since the entry of said decree in February 1913.

That in the year 1909, in which year said City of Detroit claims that the franchise for that portion of said Woodward Avenue line south of Milwaukee Avenue expired, plaintiff expended in the reconstruction of tracks in that part of Woodward Avenue \$65,336.34, and that, together with said expenditure, there has been necessarily expended by the plaintiff, to the end that the operation of the said Woodward Avenue line might continue, and the proper service might be given by its said city system, and with the knowledge, acquiescence and either tacit or express approval of the City

of Detroit and its officials, in reconstruction of and additions and betterments to that part of said Woodward Avenue Line down to and including the year 1919, \$229,536.06.

13 That by the present charter of the City of Detroit, the Commissioner of Public Works thereof is required to supervise the making of all excavations in or under the streets, alleys and public places, the laying therein of pipes, wires, cables and so forth, the erection therein of poles and the restoration thereof to normal conditions, and such Commissioner is charged with the duty of issuing permits for an entry on such streets, alleys and public places for any of said purposes or for any other purpose obstructing the use thereof by the public, and the entry upon and occupation of streets, alleys and public places for any such purpose is permitted only in the time and manner that the Commissioner may prescribe; that said Commissioner is also required to make proper charges for such supervision and the inspection necessary in connection therewith. That similar provisions were contained in the City Charter preceding the present Charter, which was in force from a period before 1909 down to the adoption of the present charter.

That pursuant to the practice by said charter provisions required, all the work covered by said expenditures on said Fort Street and Woodward Avenue lines was done under written permit from the Commissioner of Public Works, issued upon written application of the plaintiff stating the location and character of the work to be done. That all said work was done under the supervision of a city inspector designated pursuant to said charter requirements, for whose services a bill was in each case rendered by the City to the plaintiff, and paid by it. That many such permits were issued and work done thereunder in pursuance thereof in each year since 1909, and that the aggregate of the inspection charges paid to the City thereunder is several thousand dollars.

14 That in a number of cases, though not in all, the work done resulting in said expenditures was done under authority and by direction of a resolution of the Common Council of said City of Detroit, and that numerous other resolutions during said period were passed by said Common Council directing changes in the service rendered over said part of said Fort Street and Woodward Avenue Lines, and directing other acts by the Company for the improvement of the conditions of such service, all of which involved considerable expense to said street railway company, and all of which were by it complied with. That none of said resolutions contained any limitation upon the time during which they were to be operative, or upon the time during which the property whose use and usefulness was affected by compliance therewith, should continue to be used for street railway purposes by said street railway company. That in consequence of said several acts and proceedings by said Common Council, and other officials of the City of Detroit, and of said expenditures by said street railway company, under city authority, upon said Fort Street lines east of Artillery Avenue and upon the part of said Woodward Avenue south of Milwaukee Avenue and its continued operation thereof, with knowledge, consent and ap-

proval of the city authorities, and by reason of the facts in this and in the preceding section of this bill, No. 4, set forth, the right of the City of Detroit to require and enforce the removal of said Fort Street lines east of Artillery Avenue, in accordance with the provisions of said decree, has ceased; and the right of said City, if it ever had a right, to enforce the removal of the part of said Woodward Avenue line south of Milwaukee Avenue, has likewise ceased; and that the plaintiff has acquired and has the right, and is charged with the

15 duty to continue to maintain and operate said lines of street railway in the streets wherein they are situated until such time as the discontinuance of such maintenance and operation shall be consistent with the public interest.

That of the aggregate track mileage owned and operated by the plaintiff in the City of Detroit, which is 289.869 miles, there are approximately 92 miles, including said mileage on Woodward Avenue south of Milwaukee Avenue, and the Fort Street Lines east of Artillery Avenue, the franchises for which are claimed by the City of Detroit to have expired.

That there has been expended on said trackage the franchises for which are claimed to have expired, in order that the operation thereof might continue and that the plaintiff's city system as a whole might render efficient service, and with the knowledge, acquiescence and approval of the City of Detroit, and its officials, and under permits obtained, and in compliance with resolutions of the Detroit Common Council passed in like manner as the permits and resolutions hereinbefore referred to concerning said Fort Street and Woodward Avenue lines, since 1909, the sum of approximately \$2,800,000.00.

(6) That said ordinance, voted on at said election of April 5, 1920, was originally submitted to the Common Council January 6, 1920, with a message from the Mayor of the City recommending its adoption, of which message a copy is hereto attached and made a part hereof, marked Exhibit 5. That the "so-called Fort Street Line and the Woodward Avenue line to Milwaukee Avenue" referred to in said message as lines proposed to be taken over, comprised the plaintiff's trackage known as the Fort Street lines east of Artillery Avenue, and its trackage on Woodward Avenue south of Milwaukee, and are the tracks on the streets and parts of streets described

16 in paragraphs 11 and 13 of Section I of said ordinance. That the present value per mile of said Fort Street Lines east of Artillery Avenue, including fixed street equipment on the basis of the present reproduction cost, less depreciation, is approximately \$87,000.00 per mile of single track, and that the present value of said Woodward Avenue trackage, including said fixed street equipment on the same basis — approximately \$90,000 per mile of single track. That if all of said lines east of Artillery Avenue were removed, the cost of construction of new trackage, together with fixed street equipment to replace the same, would, at present prices of material and labor, be at least \$95,000 per mile of single track, making a total cost of construction of new trackage and equipment on the streets described in Section 11 of said ordinance of at least \$1,520,000.

That if said Woodward Avenue line south of Milwaukee Avenue were removed, the cost of replacement thereof by new trackage with fixed street equipment would, at present prices for material and labor, be approximately \$105,000 per mile, making a total cost of construction of new trackage and equipment on the streets and parts of streets described in Section 12 of said ordinance, of \$725,000.

That the mileage of the lines in Classes "A" and "B," mentioned in said ordinance, is 156.25 miles, and of the Class "C" lines therein is 55.25, being a total of 211.50. That the cost of acquiring the said lines proposed in said ordinance to be acquired would, whatever method of acquisition were adopted, exceed by many millions of dollars the amount of bonds provided for in said ordinance, and would upon the methods and at the estimated costs stated by the mayor's message, Exhibit 5, exceed the amount of said bonds by nearly four million dollars.

17 (7) That the main business center of the city of Detroit lies within the one-mile circle shown on said map, Exhibit 2, of which circle the center is the City Hall, situated at the corner of Fort Street and Woodward Avenue, and from which center the main thoroughfares of said city radiate. That the relative location of manufacturing, business and residence districts in said city and its suburbs and the plan of said city as shown by said map, Exhibit 2, are such that a large part of the street railway travel in said city is and necessarily will continue to be through and to and from said principal business center. That the only means of access to the said business district which will be afforded by the street railway lines proposed in said ordinance are by tracks upon the streets described in Paragraph 11 of said ordinance now occupied by said Fort Street Lines east of Artillery Avenue, and upon that part of Woodward Avenue described in Paragraph 12 of said ordinance. That the tracks upon the streets described in paragraphs 13 to 21 of said ordinance now occupied by certain of plaintiff's so-called day to day lines as hereinbefore set forth are essential to the connection of the remaining lines in said ordinance described with the tracks affording access to said business district. That said trackage affording access to said business district is essential to the efficiency and usefulness of all of said proposed city lines, and that without said tracks or without the tracks on said streets described in paragraphs 13 to 21 of said ordinance the remaining lines proposed to be acquired by the said city would be of little or no practical use and would be of no substantial public benefit.

(8) That the lines now on said streets described in Paragraph 11 of said ordinance carry approximately 23,000,000 revenue passengers per year. That the line on said streets described in Paragraph 12 of said ordinance carries approximately 55,000,000 revenue passengers per year, and that the number of revenue passengers annually carried upon the plaintiff's entire city system is approximately 330,000,000. That the lines now upon said streets described in Paragraphs 11 and 12 of said ordinances are the only convenient means by which many thousands of people

living or doing business in large sections of the city can be transported between their residences and places of business. That if said proposed street railway lines are acquired and put in operation on said streets in connection with the other lines proposed to be acquired by the City of Detroit, as stated in said ordinance, the transportation thereby afforded would but inefficiently and inadequately answer the public needs, and would answer said needs much less adequately than does the present system of street railway transportation.

(9) That included in the lines proposed to be acquired in said ordinance, is a line described in paragraph 10 thereof, which runs in part through the City of Highland Park, and another line described in paragraphs 23 and 28 thereof, running in part through the Village of Hamtramck, which city and village are both included within the exterior boundaries of said City of Detroit. That said proposed trackage in the City of Highland Park and in the Village of Hamtramck, particularly that in said City of Highland Park, are important links in the municipal street railway system proposed by said ordinance and essential to the operation and efficiency of the remainder thereof. That over the streets covered by said proposed trackage in Highland Park and Hamtramck there is no existing street railway franchise, and that under the charter of the City of Highland Park, to which plaintiff craves leave to refer with the same force and effect as if the same were herein recited, and under the general laws of the State of Michigan there is no power or valid authority to grant such street railway franchise to the City of Detroit, and therefore no authority under which the right to construct and operate street railway trackage in either the City of Highland Park or said Village of Hamtramck can be obtained.

(10) That should said lines now in operation on said streets described in paragraphs 11 and 12 of said ordinance be removed and other lines constructed in place thereof, there would under the most favorable circumstances be a serious and long-continued suspension and interruption of railway traffic over said streets, which suspension of traffic (owing to the fact that a large part of the traffic over said Fort Street line east of Artillery Avenue, and over said Woodward Avenue line south of Milwaukee Avenue, either originates at or is destined to points on other street railway lines in said city connected with said Fort Street lines and said Woodward Avenue line at points appearing on said map, Exhibit 2) would greatly impair the service and efficiency of the whole system of street railway transportation in said city, with consequent serious loss and inconvenience to the traveling public and to the general interests of the city.

(11) That should the city acquire the street railway trackage set forth in said proposition ratified April 5, 1920, it must be either by the removal of said tracks on the streets described in paragraphs 11 and 12 thereof, and the replacement thereof with new tracks, or by taking over the present tracks as part of the city trackage. That if the first alternative be adopted, it would involve disruption of the

service and loss to the public, as already pointed out, and the expenditure upon new tracks of an amount considerably in excess of the value of the present trackage, while, inasmuch as the value of the material removed would but slightly exceed the cost of removal, it would also involve a great direct loss to the plaintiff, and as already shown, greatly diminish the value and the efficiency of the remainder of its system. That in like manner, the taking over by the City of Detroit of the trackage on streets described in paragraphs 13 to 21 of said ordinance would greatly diminish the efficiency of the remainder of the said system and greatly impair the value thereof.

(12) That the charter of the City of Detroit was first amended so as to permit the city to acquire and operate a municipal street railway system, in 1913, by the addition to the charter of the chapter which now appears as Chapter 13 of Title 4 of the present charter, to which reference is hereby made. That since said charter amendment the question of municipal ownership of street railways has been much debated and discussed in said city, resulting in great diversity of opinion, not only between those who do and those who do not desire such municipal ownership, but among the large number of people who are desirous of the municipal ownership of street railways. That there have been and are now a large number of voters advocating municipal ownership of street railways who desire that the city should construct a system of its own, and not attempt to acquire any of the existing lines of the Detroit United Railway, and propositions for the acquirement of such lines have twice failed of approval on submission to popular vote. That there are also a large number of voters who, while favoring municipal ownership, do not desire the construction by the city of any lines where lines now exist, but are in favor of acquiring such lines from the present company, either by purchase or condemnation. That said proposition voted upon and ratified by the electorate on April 5, 1920, was manifestly framed with a view to this division of public sentiment, and for the purpose of combining if possible the votes both of those who favor purchase and those who favor construction as methods of municipal acquisition. That such was the design and purpose was admitted by Corporation Counsel Clarence E. Wilcox, the legal adviser of the city, who participated in the framing of said ordinance, in a public statement made on March 27th, 1920, and appearing in the Detroit Free Press of March 28th, as follows:

"Omission of a contract to purchase the 34.25 miles of D. U. R. 'day-to-day agreement' lines from the Couzens street car plan was not all oversight, Corporation Counsel Wilcox said Saturday, but was not included so the city might be free to order those tracks torn out and replaced with city-built lines.

He also said that it would have been impossible to present the ordinance divided into sections in which the construction features were separated from the purchase phase of the plan.

'It would never pass if so divided,' he explained. 'Some voters who

11 favored the construction of lines by the city might object to a purchase plan, and those who approved purchase might not wish to approve a construction plan.

'The objection to the ordinance which has been made, namely, that it contained no revision (s. c. provision) for the purchase of existing street railway was given careful thought when the measure was drafted,' Mr. Wilcox continued.

22 'As I recall the language of the charter provision referred to, it means that a contract to purchase a street car "system" shall be void unless approved by a three-fifths vote.

'It may develop that the city will find it cheaper and more expedient to order the company to remove its tracks from those streets now operated as day-to-day lines and build the tracks itself.' "

That said ordinance contains in Section 1 thereof an express direction and command to the Board of Street Railway Commissioners of the city to construct the proposed street railway lines, and by its true construction and meaning prohibits the acquisition of any of said proposed lines by purchase of existing lines from said street railway company. That said express direction and limitation are omitted from the statement of the proposition to be submitted to the electors in Section 2 of said ordinance, and *was* omitted in the statement of said proposition upon the ballots provided by the City of Detroit for use and used at said election of April 5, 1920. That the effect and intent of said omission was to mislead the voters of the city into supposing that the effect of said proposition if carried would be to authorize the acquisition of said street railway lines either by purchase or by construction.

That to the end that the voters of said City of Detroit might suppose, and to induce them to believe, that the trackage now upon the streets described in paragraphs 11 and 12 in Section 1 of said ordinance, being the Fort Street lines east of Artillery Avenue, and the Woodward Avenue line south of Milwaukee Avenue, could, if such proposition were adopted, and would, be obtained by purchase, and at a price much under their real value, the mayor of said city
23 in his said message, Exhibit 5, recommending the adoption of said ordinance, stated:

"We propose to take over the so-called Fort Street line and Woodward Avenue line to Milwaukee Avenue, which aggregates an additional 21.25 miles, which it is safe to assume the railway will be glad to deliver us in preference to getting off the streets, at say an estimated cost of \$40,000 per mile."

That as a further means to induce, and with the intent of inducing the voters of the City of Detroit to believe that said Fort Street and Woodward trackage could, if this proposition were adopted, and probably would, be acquired by purchase, and at a price much less than their value, said City of Detroit and the Mayor and Common Council thereof caused to be prepared and distributed to the voters in said city some weeks prior to said election of April 5, a document, of which a copy is hereto attached, marked Exhibit 6, pur-

porting to be a statement of the street railway plan to be voted on at said election, containing the proposition to be voted upon in the form prescribed in said ordinance, and containing portions of said ordinance, but omitting the part of Section 1 thereof which contains said direction and command to the Board of Street Railway Commissioners to construct said street railway lines, and without any indication that any portion of said ordinance was omitted. That said document upon the back thereof contained a map showing in red the street railway lines proposed to be acquired by said ordinance, each line being numbered, together with a statement of the financial plan for their acquisition, which financial statement contained among other things the following:

24 "Financial Plan for A and B Lines.

"Present trackage to be taken over at cost, less depreciation, as specified at the time the company was given permission by the city to build, under a day-to-day agreement.

"34.25 miles, estimated at \$40,000..... \$1,370,000.00

"Fort and Woodward Tracks where franchise has expired, 21.25 miles estimated at \$40,000..... 850,000.00"

There was appended also to said statement a key to the lines as numbered upon the map, which key included the following statement:

"D. U. R. lines taken over, Nos. 11 to 21 inclusive."

That at the foot of the said statement of said street railway plan appeared the following:

"This official information on the new street car plan is issued by the B. of St. R. C."—(meaning Board of Street Railway Commissioners)—"with approval of Common Council."

As plaintiff is informed and believes, and therefore alleges, the so-called sample ballot with the official information endorsed thereon above referred to, was distributed prior to the last day for the registering of the voters to vote at said election on April 5th, and at addresses taken from the previous registration list.

By reason of the fact that large numbers of electors who had previously registered had changed their residence, and the further fact that large numbers of new voters for the first time registered at the date of last registration, to-wit, on March 20th, many thousand electors who voted upon the proposition above referred to on April

5th, to-wit, a number exceeding 10% thereof, had not received and did not receive or have the benefit of the sample ballot with the explanatory information endorsed thereon to guide them in reaching their decision as to how they desired to vote; while the greater number, to-wit, a number exceeding 75% thereof, had received such sample ballot with such official information endorsed thereon. That by reason of such situation, large

numbers aggregating many thousands voted upon said proposition on April 5th with different understandings as to the question to be determined at the election of April 5th.

That during an active campaign of several weeks preceding said election, numerous speeches were made by the Mayor of the City of Detroit, and other advocates of the adoption of said proposition, submitted at said election of April 5, and numerous articles appeared in certain newspapers of said city, favoring the adoption of said proposition, which speeches and articles contained statements of the same tenor and purport as that above quoted from the said message of the mayor and those appearing upon said document distributed among the voters of the city as above set forth. That the several matters, representations and statements in this section of this bill of complaint set forth, together with the omission from the proposition itself and from the statements distributed among the voters of the matter contained in Section 1 of the ordinance above referred to, were adapted to and were intended to induce the voters of the City of Detroit to believe that under said proposition submitted at said election, if carried, the city would be empowered but would not be required to purchase said Fort Street lines east of Artillery Avenue, and said Woodward Avenue line south of Milwaukee Avenue, and would be able to force the street railway com-

26 pany to sell said lines to the city at much less than their value by the threat that if such sale were not made, the removal of said lines from the streets would be compelled, with consequent destruction of their value, and a serious impairment of the value of the other lines and property of said street railway company in said city.

(13) That the City of Detroit, in recognition of the fact that the public interest imperatively requires the uninterrupted continuance of street railway transportation over said Fort Street lines east of Artillery Avenue, and over said Woodward Avenue line south of Milwaukee Avenue, has never demanded either the stoppage of operation thereof or the removal of the trackage therefrom. That in view of the facts hereinbefore set forth, and as plaintiff is advised and verily believes and charges, said city and the other defendants herein do not desire to design the abandonment of use of said streets for street railway transportation purposes, nor intend the construction of new lines thereon, but that said defendants do propose and design, (inasmuch as the franchises under which said Fort Street lines east of Artillery Avenue were originally constructed have expired, as determined in said decree Exhibit 3, and inasmuch as it is the claim of the city that the franchise under which the part of said Woodward Avenue line south of Milwaukee Avenue was constructed, has expired, and that therefore the City can forthwith compel the removal of said Woodward Avenue tracks) by the threat of requiring the removal of said tracks (which removal would destroy practically the entire value of the property removed, and would greatly impair the value and usefulness of the remaining lines of the Detroit United Railway in the City of Detroit) to force said

27 Detroit United Railway to sell the trackage and equipment upon said streets for an amount much less than their real value. That for this reason, among others, said proposition submitted to the voters on April 5, 1920, was framed in general terms, not specifically committing the city to the purchase of said lines, and not including any contract of purchase. That said ordinance in which said provision was embodied was framed in furtherance of said design, and to the end that said City of Detroit may acquire said Fort Street lines east of Artillery Avenue, and said Woodward Avenue line south of Milwaukee Avenue, as a part of its proposed municipal system, and at a price much under their real value, and under the cost of construction of those new lines, which, if the existing lines were removed, would be required to replace them. That but for the formation of said design, the passage of said ordinance and the adoption of said proposition in pursuance thereof, and the purpose to carry out the plan of municipal acquisition and operation of the street railway system therein set forth, no attempt to deprive the Detroit United Railway of its property in said lines, and no attempt or threat to compel the removal thereof from said streets, would be made.

That while, in accordance with the decision in the Fort Street case above referred to, a municipality may compel a street railway company to remove its tracks and property from streets wherein the company's rights have expired, when the public interest may so require, either in order that such streets may be left free for other traffic, or to enable the construction of new street railway lines thereon, such municipality cannot rightfully order or attempt such removal of tracks for the purpose, not of obtaining their removal, but to force their sale to the city at less than their value, and less than the cost of replacement, to the end that the tracks may remain, but the ownership thereof be transferred from the company to the municipality. That such action on the part of the municipality would be in bad faith and illegal, and that the plan and purpose of the City of Detroit and its co-defendants hereinbefore set forth, as regards said Fort Street lines east of Artillery Avenue, and said Woodward Avenue line south of Milwaukee Avenue, is therefore illegal.

28 The said ordinance was not composed and drafted for the purposes therein stated, of constructing lines of street railways upon any of the streets therein enumerated, upon which plaintiff now has and operates lines of street railways. This appears by Exhibits 5 and 6 hereto attached and was many times openly and publicly stated by the said mayor and his more active confederates after the submission of said ordinance, and before the voting thereon. But the said ordinance was by the said mayor, and his subservient associates, wickedly conceived and cunningly devised with the intention and for the purpose of trampling upon and setting at naught those ideas and conceptions of honesty, decency and fairness which it is now and from the earliest ages has been, the function of courts of justice to vindicate, and of circumventing the high constitutional principles embodying those ideas and conceptions.

It is the pernicious and mendacious purpose of the said mayor, assisted by his said subservient associates and appointees at his behest and command to take the property of the plaintiff, that is
 29 the street railway tracks and overhead equipment now existing on the streets in said ordinance enumerated, for the use of the City of Detroit and the people thereof, as such street railway tracks and equipment, without paying the plaintiff fair and reasonable compensation therefor.

The said intention and purpose is to so take the corpus of said street railway without fair and reasonable compensation just as the officials of said city attempted by the ordinance before the court in Detroit United Railway versus City of Detroit, 248 U. S. 429, to take the use of the identical lines without fair and reasonable compensation. The method of accomplishing said dishonest and unlawful purpose the said mayor and some of his associates have many times openly and publicly stated to be (indeed, the intent and purpose to use this method is clearly indicated in the mayor's message to the Common Council, Exhibit 5, and the sample ballot, Exhibit 6), that he will offer to plaintiff the sum of \$40,000.00 for each mile of track (including overhead equipment) so to be taken, which sum is—as is well known to said mayor and his associate defendants—less than one-half of the fair value thereof, and that if such offer is not complied with, he and his associate defendants will order said tracks and equipment removed from said streets. Thus it is not proposed or intended by the said mayor and his associates, to exercise the claimed power of ordering said tracks and equipment removed from said streets, because said railways are no longer required thereon for the public convenience, or desired thereon, or for any other legitimate or good-faith purpose.

The claimed power of so ordering said tracks and equipment to be removed from said streets is to be exercised only as a pretense, pretext and subterfuge for the accomplishing of the said
 30 iniquitous scheme of taking said property from the plaintiff for use as a street railway in its precise present condition and in the manner in which it is now used, without paying fair and reasonable compensation therefor.

Plaintiff is aware that on occasions individuals of piratical and conscienceless tendencies have taken advantage of other individuals in private affairs of business and life, and have accomplished schemes of somewhat similar moral turpitude. But plaintiff asserts that a municipal or political subdivision of a state is by the high and beneficent principles and provisions of the Constitution adopted by the People of the United States, constrained to deal honestly and fairly with all persons, and not to take the property of any of them without due process of law, that is, paying fair and reasonable compensation therefor.

Plaintiff shows and insists that it is the duty of the court, and that the court by right ought, and in justice must, strike directly at the vicious and unconscionable purpose clearly apparent in this scheme for the taking of the property of plaintiff without fair and reasonable compensation therefor, and enjoin the accomplishment

thereof. There is, as said Mayor and his associate defendants well know, a regular and orderly method of procedure prescribed by the laws of the State of Michigan for taking said property by the City of Detroit, if said property is desired by said city, but said procedure requires payment of fair and reasonable compensation. The carrying out and accomplishment of said iniquitous and unlawful purposes and schemes by said Mayor and his associates is imminent and threatened. As recently as Wednesday, April 7, 1920, said Mayor has stated in the public press that he purposes and intends to proceed to coerce plaintiff in the manner above stated.

31

(14) If there be any uncertainty as to the proper construction of Section 25 of Article VIII of the Michigan State Constitution requiring the affirmative vote of the electors before a city can acquire a public utility, in its application to this case, as well as of the proper construction of the proposition submitted to the electors, nevertheless under any permissible construction, said proposition for acquisition was not so submitted to the electors that their affirmative vote thereon empowers the city to acquire the street railways designated in said proposition or any part thereof.

If in determining what was the real proposition of acquisition it be held that we are to look at the ordinance enacted by the Common Council rather than to the proposition submitted to the electors, the real proposition of acquisition was not submitted to the electors because there was omitted therefrom the following explicit language: "The said Board of Street Railway Commissioners shall construct, own, maintain and operate" the street railways herein designated. With this explicit language omitted, the electors would not understand that the adoption of the proposition would mean that the street railway tracks on Woodward Avenue and Fort Street and on the day-to-day lines, were to be torn up and new tracks constructed in their place. With this explicit language omitted, it was easy for the municipal authorities to induce the electors to credit, and they did induce them to credit their official statements representing that where these street railways existed they would be taken over.

32 Assuming that the real proposition of acquisition is that which was submitted to the electors, rather than that in the ordinance which was not submitted, the proposition of acquisition is susceptible of several constructions, none of which makes the affirmative vote of the electors a grant of power to the city to acquire the street railways designated in said proposition, or any part thereof.

If, in determining what was the proposition so submitted, the language upon the ballot is alone to be considered, it may be held that the proposition submitted was one to acquire by construction only. If so, the real proposition of acquisition was not submitted to the electors, for the "official information" upon the back of the sample ballot distributed to the electors informs them that the Woodward Avenue and Fort Street trackage and the day-to-day trackage is to be "taken over," and this so-called official information was relied upon by the voters.

It may be that the proper construction of the proposition submitted to the voters is this: the street railways on streets where no trackage exists are to be acquired by construction, and on streets where trackage exists, such trackage is to be acquired by purchase. That is the real plan of acquisition intended by defendants, and that is the plan of acquisition stated to the voters on the sample ballot. If that is the proper construction of the action of the electors in voting for the proposition, then what they have done is legally ineffectual because of the following explicit provisions in the city charter, Title 4, Chapter 13, Sections 6, 7 and 8:

"Sec. 6. It shall be the duty of said board to proceed promptly to purchase, acquire or construct and to own and operate a
33 system of street railways in and for the city, and as soon as practicable to make said system exclusive. Said board shall, whenever it deems it necessary, build extensions and new lines. Such extensions and new lines shall be first approved by the common council.

"Sec. 7. Said board may purchase or lease, or by appropriate proceedings prescribed by law and in the name of the city condemn all or any part of the existing street railway property in the city, and in like manner said board shall have power to acquire a street railway property without the limits of the city as prescribed by law, if the board shall determine; or it may make the necessary purchase of lands, machinery, engines, ties, rails, poles, wires, conduits, cars, tools and all other articles, apparatus, appliances, instruments and things necessary to construct, own, maintain and operate in said city for said city and within a distance of ten miles from any portion of its limits as aforesaid, a system of street railways beneath, upon and above such streets and other places in the city and outside thereof as aforesaid as the common council shall from time to time elect.

"Sec. 8. Any contract to purchase or lease herein contemplated, or any plan to condemn existing street railway property shall be void unless approved by three-fifths of the electors voting thereon at any or special election, and upon such proposition women taxpayers having the qualifications of male electors shall be entitled to vote."

34 It is an essential part of the plan of acquiring the street railways described in the proposition that these existing street railway lines herein mentioned, should be acquired by purchase. Without this the whole scheme would fail and as the intent of the voters to acquire these existing lines can be given no effect, so no effect can be given to that part of the proposition providing for the construction of the railways on the other streets. This is so because the electors voted to construct these railways on these other streets, upon the understanding, and only upon the understanding, that they would be made useful by the purchase of existing trackage on streets where that trackage did exist.

It is possible that the proposition of acquisition submitted to the electors is susceptible of the construction that it conferred authority

upon the Board of Street Railway Commissioners to acquire a street railway either by purchase or construction, as it might determine to be wise. In that case, an affirmative vote for the proposition does not authorize acquisition for several reasons:

(a) The electors cannot give such a broad power to the Board of Street Railway Commissioners.

(b) Because of the prohibition of Section 8 of Article XIII of the City Charter, such a proposition, though in form authorizing an acquisition by purchase or construction, is legally nothing more than a proposition to acquire by construction, and is objectionable because it represents to the electors that acquisition can be by purchase.

35 It is possible that in construing the proposition submitted it may be proper for a court to say some of those who voted affirmatively may have got all their ideas of the proposition from reading what was contained in its body; while others got all their ideas from reading the so-called "official information" on the back of the sample ballot, therefore some may have voted for it because they believed it to be solely a proposition to acquire by construction, while others voted for it because they believed it to be a proposition to acquire the existing lines by purchase. Under this reasoning, the proposition was not properly submitted because it was so submitted as to get the votes of those who were opposed to construction through their beliefs that it was a purchase proposition, and to get the votes of those opposed to purchase through their beliefs that it was a construction proposition.

The proposition for acquisition was not so submitted to the electors that their affirmative vote thereon empowers the city to acquire the street railways designated in said proposition or any part thereof, because neither in the ordinance nor in the body of the proposition is there any estimate of the cost of acquisition, and the proposition for acquisition submitted to the elector must include such an estimate; and also because no limit upon such cost is fixed in the proposition. If it be permissible to consider the estimate appearing upon the sample ballot distributed among the voters in advance of the election, that estimate covers the acquisition of lines of Classes "A" and "B" but not of Class "C." By the affirmative vote of the electors they gave the same power to construct lines in Class "C" as they do for Classes "A" and "B." Their vote if it is effectual at all is a vote empowering the construction of many miles of trackage without any limitation whatsoever upon the amount to be expended there-

36 for, or any indication of where and how that amount is to be raised. A favorable vote upon a blanket proposition like this means nothing and confers no authority.

Plaintiff further avers that it is an essential part of the real proposition of acquisition that the city will, by the threat that it will make plaintiff cease operating and remove its tracks from the street, and by other illegal means, compel plaintiff to sell said tracks to the city for an inadequate price, and to thereby deprive plaintiff of its property without due process of law, in contravention of the due process clause of the 14th Amendment of the Constitution of the

United States, that this illegal and unconstitutional part of the proposition cannot be executed, and that with it eliminated, the entire proposition of acquisition becomes abortive and useless, even if it could be said—and plaintiff denies that it can be so said—that legal effect could in that case be given to any other part of the proposition of acquisition.

(15) Under the Charter of the City of Detroit, to which reference is hereby made, the common council of said city is its legislative body and exercises all of its legislative powers.

The Board of Street Railway Commissioners of said city have the general powers of acquiring a municipal street railway system by construction, purchase or lease, and of providing the funds for the payment thereof, with the co-operation of the common council of said city, to the extent and in the manner, and subject to the limitations contained in Chapter XIII of Title IV of said Charter, to which plaintiff craves leave to refer with the same force and effect as if the same were herein recited, and particularly subject to the charter requirements that no contract of purchase or lease, and no
37 plan to condemn existing street railway property, is valid unless approved on submission thereof to vote of said electors and to the constitutional requirement in Section 25, Article 8, of the State constitution, that no municipality shall acquire any public utility unless the proposition to acquire it shall have first been submitted to and approved by the vote of the electors.

The mayor of said city has the power of veto of all legislative acts of the common council, and any act so vetoed can only be passed over his veto by a vote of two-thirds of the members elect of the council. The mayor appoints the city controller, and the controller is removable at his will without cause assigned. He appoints the Board of Street Railway Commissioners, who are also removable at the will of the mayor. He appoints the Commissioner of Police, who is the head of the Police Department of the city, and such Commissioner is removable at the will of the mayor without cause assigned. He appoints the Corporation Counsel, who is the head of the city Law Department, and who is removable by the mayor without cause assigned and at any time.

That the powers and duties of said city officials appear by the city charter, to which plaintiff craves leave to refer with the same force and effect as if it were herein recited. That all powers of said officials appointed by said mayor will be exercised by them in accordance with his will, and will be used to assist in carrying out the plan and purpose of acquisition by the City of Detroit of the plaintiff's property described and set forth in Sections 13, 14 and 16 of this bill.

(16) Plaintiff further avers that it is the claim of the defendants that the effect of the vote of the electors of the City of Detroit gives them as city officials full power and authority to compel said
38 plaintiff to sell to the city its trackage on Woodward Avenue and on Fort Street, and on the day-to-day lines heretofore

described for \$40,000.00 per mile, which, as heretofore stated, is very much less than its real value and very much less than it would cost the city if it constructed the same; and as to the day-to-day lines, it is very much less than the cost of the said lines to the plaintiff, less depreciation.

Plaintiff also avers that it is the intention of said defendants to enforce said claim and they have threatened to do so and plaintiff upon information and belief says they intend immediately to take steps to enforce it.

Plaintiff further avers that it is the intent and purpose of said defendants, note particularly the mayor's message submitting the ordinance—which purpose they have threatened to execute—to say to plaintiff, "You must either sell your trackage at the inadequate price the city offers, or cease operating your cars thereon and tear up and remove the same from the streets."

This in the circumstances stated in this bill is, plaintiff avers, a resort to illegal means to compel plaintiff to sell its property for an inadequate price, and to thereby deprive it of its property without due process of law in contravention of the due process of law clause of the 14th amendment of the Constitution of the United States.

Plaintiff further avers upon information and belief, that it is the intention of the said defendant Couzens, acting as Mayor of the City of Detroit, and of the other defendants who are subservient to his will, and who will conform to his will, to resort to other illegal means to compel plaintiff to assent to a sale of its said property for said inadequate value, and thereby deprive plaintiff of said property
39 without due process of law, in contravention of the due process clause of the 14th Amendment of the Constitution of the United States.

Plaintiff further avers that after the election and before the votes were canvassed, and apparently upon the assumption that the vote on said proposition as reported by the City Clerk, and hereinbefore set forth, was correct, and therefore before said proposition or said ordinance became effective, said defendant Couzens by the acquiescence of the other defendants in this bill, caused the work of construction of said street railways to be started, and that it is the intention of said defendant Couzens, acting as mayor of the City of Detroit, and of the other defendants who are subservient to his will and who will execute his will, to at once put in force said street railway proposition, and upon the assumption, too, that this gives the city officials the authority to compel plaintiff to sell its trackage as aforesaid, without giving plaintiff or any other persons the opportunity of having an adjudication as to the legality of the same, and thereby deprive plaintiff of its property without due process of law, in contravention of the due process clause of the 14th amendment of the Constitution of the United States.

(17) Plaintiff alleges that the matter in dispute between the parties in this suit exceeds the sum of One Million (\$1,000,000.00) Dollars, exclusive of interest and costs, and arises under the Constitution of the United States.

Plaintiff therefore prays:

(a) That said City of Detroit, James Couzens, the Mayor thereof, Henry Steffens, Jr., the Controller thereof, Ralph Wilkinson, William B. Mayo, and Griffith O. Ellis, members of the Board of Street Railway Commissioners thereof, and Charles F. Bielman, William E. Bradley, Fred W. Castator, John A. Kronk, 40 Sherman Littlefield, John C. Lodge, John C. Nagel, David W. Simons and James Vernor, members of the Common Council thereof, be made parties defendant to this bill of complaint, and required by the process of the court to appear and answer the same, without oath, answers on oath being expressly waived.

(b) That a temporary restraining order or injunction be granted by the court, restraining and enjoining the said defendants, and each of them, and the officers and agents of each of them, from enforcing or taking any steps to enforce the provisions of said proposition voted upon at said election of April 5, 1920, from enforcing or taking any steps to enforce the provisions of said ordinance adopted by said Common Council on February 27, 1920, from issuing or selling or taking any steps to issue or sell the bonds in said ordinance and in said proposition provided for, and from acquiring and removing, causing or ordering the removal of the street railway trackage and equipment of the plaintiff upon the streets and parts of streets described in Paragraphs 11 to 21, both inclusive, of Section I of said ordinance, and referred to in Section 2 of this bill of complaint, and from taking any steps or proceedings to acquire, to remove, or cause the removal from said streets of said street railway trackage and equipment pending the hearing on the merits of this suit.

(c) That a permanent injunction be granted, perpetually enjoining and restraining said defendants, and each of them, and the officers and agents of each of them, from enforcing or taking any steps to enforce the provisions of said proposition voted upon at said election of April 5, 1920, from enforcing or taking any 41 steps to enforce the provisions of said ordinance adopted by said Common Council on February 27, 1920, from issuing or selling or taking any steps to issue or sell the bonds in said ordinance and in said proposition provided for, and from acquiring and removing, causing or ordering the removal of the street railway trackage and equipment of the plaintiff upon the streets and parts of streets described in Paragraphs 11 to 21, both inclusive, of Section 1 of said ordinance, and referred to in Section 2 of this bill of complaint, and from taking any steps or proceedings to acquire, to remove, or cause the removal from said streets of said street railway trackage and equipment.

(d) That said proposition and said ordinance be declared invalid and void for any and all purposes.

(e) That the plaintiff have such other and further relief and such different relief in the premises as may be agreeable to equity and good conscience.

DETROIT UNITED RAILWAY,
By FRANK W. BROOKS,
President.

STEVENSON, CARPENTER & BUTZEL,
Attorneys for Plaintiff.
DONNELLY, HALLY, LYSTER & MUNRO AND
H. E. SPALDING,
Of Counsel.

42 EASTERN DISTRICT OF MICHIGAN,
County of Wayne, ss:

On this 10th day of April, A. D. 1920, before the undersigned, a Notary Public in and for said County, personally appeared Frank W. Brooks, who being duly sworn says:

That he is President of the Detroit United Railway and is authorized in its behalf to sign its name to the foregoing Bill of Complaint.

That he has heard read said Bill of Complaint and knows the contents thereof; that the same is true as therein stated except as to matters therein stated upon information and belief, and as to such matters he believes them to be true.

N. J. FLEMING,
Notary Public, Wayne County, Mich.

My commission expires February 14, 1923.

43 EXHIBIT 1.

Whereas, by the terms of a temporary arrangement between the City of Detroit and the Detroit United Railway made August 7, 1913 (J. C. C., 1913, pp. 1125-1127), it was agreed among other things that the Detroit United Railway would construct the proposed Crosstown line on or near Junction Avenue in connection with existing tracks; also connect the Mack Avenue and the Myrtle Street line as hereinbefore proposed; and extend the Kercheval Avenue line easterly to St. Jean Avenue, thence southerly to Jefferson Avenue; and also make the necessary extensions to the new Michigan Central Terminal Station; all to be on streets and locations to be approved by the Common Council; and,

Whereas, the extension to the Michigan Central Terminal Station has been constructed and the Common Council on September 30, 1913 (J. C. C., p. 1385) adopted a resolution for the construction of the Junction Avenue line; and

Whereas, the City of Detroit desires additional trackage to be constructed in connection with the Junction Avenue line upon streets hereinafter named, in lieu of the Mack and Myrtle Street line, and

the Detroit United Railway is willing to construct said trackage under the conditions hereinafter stated; and,

Whereas, the said Common Council has determined upon and fixed the lines or streets upon which said Junction Avenue line and said additional trackage shall be located and constructed, as follows:

44 Double track on Junction from Fort to Michigan, thence west on existing tracks in Michigan Avenue to Thirty-fourth and Thirty-fifth;

Single track on Thirty-fourth, Michigan to Devereaux;

Single track on Devereaux, Thirty-fourth to Thirty-fifth;

Single track on Thirty-fifth, Devereaux to Michigan;

Double track on Thirty-fourth, Devereaux to Warren;

Single track on Thornton, Seebaldt to Warren;

Single track on Vancourt, Warren to Seebaldt;

Single track on Seebaldt, Thornton to Vancourt;

Double track on Seebaldt, Vancourt to Grand River, thence on Grand River Avenue on existing tracks to Lothrop;

Single track on Lothrop, Grand River to Linwood;

Single track on Linwood, Lothrop to Northwestern;

Single track on Northwestern, Linwood to Grand River;

Double track on Linwood, Lothrop to Milwaukee;

Double track on Milwaukee, Linwood to Holden;

Double track on Holden, Milwaukee to Lincoln;

Double track on Lincoln, Holden to Baltimore;

Single track on Lincoln, Baltimore to Milwaukee;

Single track on Lincoln, Baltimore to Milwaukee;

Single track on Baltimore, Lincoln to Brush;

Single track on Brush, Baltimore to Milwaukee;

Single track on Milwaukee, Brush to Lincoln;

45 Double track on Milwaukee, Brush to Mt. Elliott;

Double track on Mt. Elliott, Milwaukee to Harper; to the end that a double track system with cars running in each direction may be operated from the intersection of Junction Avenue and Fort Street to the intersection of Mt. Elliott and Harper Avenue;

Now, therefore, be it resolved, that consent, permission and authority is hereby granted to the Detroit United Railway to enter upon said above named streets and avenues and construct thereon a street railroad, with all necessary side tracks, turn outs, switches, poles, wires and overhead power equipment, and connect the same and operate its cars on said streets and avenues in connection with those parts of its existing tracks above described under the same terms and conditions under and by virtue of which it is operating that portion of its system constructed under authority of the said Hamilton Boulevard extension above referred to, except as otherwise provided in this resolution, and in the agreement of August 7th, 1913.

And be it further, Resolved, That the adoption and acceptance of this resolution shall release the Company from its obligation to construct the Mack avenue and Myrtle street line contained in the agreement of August 7th, 1913, and will also be deemed a withdrawal of

the Company's proposal to the Public Utilities Committee of the Common Council of the City of Detroit to extend the Kercheval Avenue line easterly of St. Jean avenue;

And be it further, Resolved, that the work herein authorized shall be started at once and pushed to completion without interruption;

46 Provided, however, that any delay caused by court proceedings, the inability of the Company to obtain necessary funds for constructing the work, or other causes beyond the control of the Company shall not be interruption within the meaning of this paragraph;

And be it further resolved and understood that the City of Detroit shall be lawfully authorized to engage in the ownership and operation of street railways and shall so engage in such ownership and operation and shall desire to operate a part of its system over said streets, it shall purchase the tracks and equipment constructed under this consent together with the equipment necessarily purchased and acquired by said Company for the operation of said cars over such additional tracks, and shall pay therefor a sum of money equal to the cost thereof less depreciation to be ascertained at the time of purchase thereof by the City, the sum to be agreed upon by the parties hereto, or if they shall fail to agree, the said sum shall be determined by a Board of Arbitration, one member of which shall be selected by the Company, another by the Mayor of City of Detroit, and the third by the two thus chosen, and that the decision of said Board or a majority thereof shall be final; Provided, that the Board of Street Railway Commissioners of the City of Detroit or any member thereof shall have the supervision of the construction of said tracks and shall have free access to the books and vouchers of said Company for the purpose of ascertaining the cost of said tracks and construction, together with any other information in whatever form it may be which said street railway company may have which shows the cost of such construction.

And be it further resolved and understood that said Railway Company by its acceptance hereof gains no term rights in said streets by reason of installing the equipment herein permitted, and that
47 the Council or the people of the City of Detroit at their pleasure or caprice may revoke the permit hereby granted, and said Company will forthwith remove from the streets the property permitted to be placed therein by it under this grant.

It is further understood and agreed between the said company and the Common Council of the City of Detroit that the making of this grant and the acceptance thereof by said Company shall not be deemed to be a waiver of any of the rights of said City of Detroit or of said Railway with reference to the construction, maintenance and operation of any lines or railway or street railway tracks now owned, maintained and operated in said city and that each party hereby saves and reserves all its rights whatever they may be the same as though this grant had not been made or accepted.

And be it further resolved that in connection with this permit the company will put into effect the rates of fare as provided in the resolution of August 7, 1913, as follows:

(1) Seven tickets for twenty-five cents (25c) each of which tickets shall be good for a ride for any distance in one direction over said tracks hereby authorized during 24 hours of the day;

(2) Upon the payment of the fare at the rate of seven tickets for twenty-five cents or five cent (5c) fare, a transfer shall on demand be issued to any connecting or intersecting lines according to the usual custom;

(3) The existing provisions now in force on other lines for workmen's tickets, so called eight for twenty-five cents, shall also be in force on this line;

(4) A single cash fare shall be five cents (5c) with all existing transfer privileges.

48 & 49 And be it further resolved that the agreement of August 7, 1913, hereinbefore referred to, shall remain in full force and effect except as herein modified.

And be it further resolved that the resolution of September 30, 1913 (J. C. C. 1913, p. 1384) is hereby rescinded.

And be it further resolved that this permit is void if not accepted within ten days after its approval by the Mayor.

(Here follows map marked p. 48.)

EXHIBIT 3.

An Ordinance relative to acquiring, owning, maintaining and operating a street railway system upon the surface of the streets, avenues and public places of the City of Detroit and within a distance of ten miles from any portion of its corporate limits that the public convenience may require for the purpose of supplying transportation to the City of Detroit and the inhabitants thereof, within and without its corporate limits, and to submit to the electors of said City of Detroit a proposition to authorize and empower the City of Detroit to acquire, own, maintain and operate a street railway system, and to borrow money upon the credit of the City of Detroit to an amount not to exceed Fifteen Million (\$15,000,000.00) Dollars by the issuance of its public utility bonds therefor, and to call a special election to vote thereon.

It is hereby ordained by the people of the City of Detroit:

Section 1. That the Common Council of the City of Detroit hereby declare a public improvement to be necessary in the
 50 City of Detroit in connection with the supplying of transportation to the City of Detroit and the inhabitants thereof upon the surface of the streets, avenues and public places of the City of Detroit and within a distance of ten miles from any portion of its corporate limits that the public convenience may require, and to the end thereof hereby declare it necessary that the Board of Street Railway Commissioners proceed and the said Board of Street Railway Commissioners is hereby authorized and directed to proceed as soon as practicable to acquire, own, maintain and operate for and in behalf of the said City of Detroit a street railway system upon the surface of the streets, avenues and public places of the City of Detroit and within a distance of ten miles from any portion of its corporate limits that the public convenience may require, as herein designated, to-wit:

Class "A" Lines.

(1) A double track street railway commencing at the intersection of Mack Avenue with Gratiot Avenue, thence westerly on Mack Avenue to Riopelle Street; thence a double track southerly on Riopelle Street to Rowena Street; thence a single track southerly on Riopelle Street to Eliot Street; thence westerly a single track on Eliot Street to St. Antoine Street; also a single track from the intersection of Rowena Street and Riopelle Street, westerly on Rowena Street to St. Antoine Street; thence a single track on St. Antoine Street southerly to Eliot Street; thence a double track on Eliot Street westerly to Brush Street; thence a double track southerly and diagonally across Brush Street on Eliot Street to John R. Street; thence
 51 a single track on Eliot Street westerly and across Woodward Avenue to Stimson Avenue; thence westerly on Stimson Avenue a single track to Cass Avenue; thence northerly a

single track on Cass Avenue to Davenport Street; also a single track from the intersection of Eliot Street and John R. Street, northerly on John R. Street, to Rowena Street; thence westerly; a single track on Rowena Street across Woodward Avenue to Davenport Street and westerly on Davenport Street to Cass Avenue; thence northerly, a double track on Cass Avenue to Selden Avenue; thence westerly, a double track on Selden Avenue to Lincoln Avenue; thence northerly a double track on Lincoln Avenue to Canfield Avenue West; thence westerly on Canfield Avenue West, a double track to Grand River Avenue; thence a double track on and across Grand River Avenue to Buchanan Street; thence westerly a double track on Buchanan Street to Scotten Avenue; thence a double track northerly on Scotten Avenue to Buchanan Street; thence westerly, a double track on Buchanan Street to Thirty-fifth Street.

(2) A double track street railway on McGraw Avenue commencing at its intersection with Junction Avenue, thence easterly on McGraw Avenue to Linwood Avenue; thence northerly a double track on Linwood Avenue to Ferry Park Avenue.

(3) A double track street railway commencing at the intersection of Moran Street with Milwaukee Avenue East; thence southerly on Moran Street to Palmer Avenue East; also commencing at the intersection of Van Dyke Avenue with Palmer Avenue East; thence westerly a double track on Palmer Avenue East to McDougall Avenue; thence southerly on McDougall Avenue a double track from

52 Palmer Avenue East to Charlevoix Avenue; thence easterly on Charlevoix Avenue, a double track to Crane Avenue; thence southerly on Crane Avenue a double track to Charlevoix Avenue; thence continuing easterly a double track on Charlevoix Avenue to Pennsylvania Avenue; thence northerly on Pennsylvania Avenue a double track to Charlevoix Avenue; thence continuing easterly a double track on Charlevoix Avenue to St. Clair Avenue; thence a double track northerly on St. Clair Avenue to Charlevoix Avenue; thence easterly a double track on Charlevoix Avenue to Alter Road; also commencing at the intersection of Harper Avenue and Van Dyke Avenue; thence southerly a double track on Van Dyke Avenue to Jefferson Avenue East; thence westerly a single track on Jefferson Avenue East to Helen Avenue; also a double track westerly on Lafayette Avenue East from Baldwin Avenue to Van Dyke Avenue.

(4) A double track street railway commencing at the intersection of Joy Road with Grand River Avenue, thence easterly on Joy Road to Linwood Avenue; thence southerly a double track on Linwood Avenue to Clairmount Avenue; thence easterly on Clairmount Avenue a double track to Woodward Avenue, thence diagonally across Woodward Avenue to Owen Avenue; thence easterly, a double track on Owen Avenue to Russell Street; thence southerly a double track on Russell Street to Milwaukee Avenue East.

(5) A double track street railway commencing at the intersection of Petoskey Avenue with Joy Road; thence northerly on Petoskey

Avenue to Davison Avenue; also commencing from the intersection of Potoskey Avenue and Davison Avenue a double track easterly on Davison Avenue to Twelfth Street; thence southerly on Twelfth Street a double track to Elmhurst Avenue.

53 (6) A double track street railway commencing at the intersection of Burlingame Avenue with Twelfth Street; thence easterly on Burlingame Avenue to its intersection with Hamilton Boulevard.

(7) A single track street railway commencing at the intersection of Kulick Avenue with Junction Avenue; thence westerly on Kulick Avenue to Thirty-fifth Street, thence northerly on Thirty-fifth Street a single track to and across Michigan Avenue.

(8) A double track street railway commencing at the intersection of Artillery Avenue and Jefferson Avenue West, thence northerly on Artillery Avenue to Fort Street West.

(9) A single track street railway commencing at the intersection of Duncan Street with Van Dyke Avenue, thence easterly on Duncan Street to Crane Avenue, thence northerly a single track on Crane Avenue to Harper Avenue; thence easterly from Crane Avenue on Harper Avenue a double track to and across Gratiot Avenue; also a single track commencing at the intersection of Crane Avenue and Harper Avenue, thence westerly on Harper Avenue to Van Dyke Avenue; also a double track commencing at the intersection of Warren Avenue East with Bewick Avenue, thence westerly on Warren Avenue East to Pennsylvania Avenue; thence a double track commencing at the intersection of Pennsylvania Avenue with Warren Avenue East, northerly on Pennsylvania Avenue to Gratiot Avenue; also single tracks connecting tracks on Pennsylvania Avenue with tracks on Harper Avenue through first two alleys approximately parallel with and southeast of Gratiot Avenue.

54 (10) A double track street railway commencing at the intersection of Twelfth Street with Davison Avenue, thence easterly on Davison Avenue to its intersection with the City Limits of the City of Highland Park, thence continuing on Davison Avenue easterly to Hamilton Boulevard; thence diagonally across Hamilton Boulevard continuing on Davison Avenue to Woodward Avenue; thence easterly across Woodward Avenue to Windemere Avenue and easterly on Windemere Avenue to John R. Street; also a double track commencing at the intersection of John R. Street with Victor Avenue in Highland Park, thence southerly on John R. Street to its intersection with the southerly city limits of the City of Highland Park; thence continuing on John R. Street southerly a double track to Holbrook Avenue; thence diagonally across Holbrook Avenue to John R. Street, and thence continuing southerly on John R. Street to its intersection with Baltimore Avenue East.

(11) A double track street railway commencing at the intersection of Artillery Avenue with West Jefferson Avenue, thence easterly on West Jefferson Avenue to Clark Street; thence a double

track northerly on Clark Street to Fort Street West; also a double track commencing at the intersection of Artillery Avenue with Fort Street West, thence easterly on West Fort Street to and across Woodward Avenue to Cadillac Square thence a single track on the southerly part of Cadillac Square to Randolph Street; also a single track on the northerly part of Cadillac Square from Woodward Avenue to Bates Street; thence northerly a single track on Bates Street from Cadillac Square to Randolph Street; also single track on Randolph Street from Cadillac Square to Monroe Avenue; also a single track easterly on Monroe Avenue from Randolph Street to Elmwood Avenue; thence a single track on Elmwood Avenue southerly from Monroe Avenue to Lafayette Avenue East; thence a double track on Lafayette Avenue East from Elmwood Avenue easterly to Baldwin Avenue; also a single track on Helen Avenue, northerly from Jefferson Avenue East to Lafayette Avenue East; also a single track westerly from Elmwood Avenue to Randolph Street on Lafayette Avenue East.

(12) A double track street railway commencing at the foot of Woodward Avenue, north of the Detroit River, thence northerly on Woodward Avenue to its intersection with Milwaukee Avenue.

(13) A double track street railway commencing at the intersection of Twelfth Street with Ferry Park Avenue, thence northerly on Twelfth Street to Elmhurst Avenue.

(14) A double track Street railway commencing at the intersection of Warren Avenue West with Junction Avenue, thence westerly on Warren Avenue West, to the present westerly city limits.

(15) A double track street railway commencing at the intersection of Junction Avenue with West Fort Street, thence northerly on Junction Avenue to and across Michigan Avenue; thence a single track northerly on Junction Avenue from Michigan Avenue to Devereaux Street; also a single track northerly on Thirty-fifth Street from Michigan Avenue to Devereaux Street; thence a single track easterly on Devereaux Street to Junction Avenue; thence a double track northerly on Junction Avenue from Devereaux Street to Warren Avenue West.

56 (16) A double track street railway commencing at the intersection of Epworth Boulevard with Warren Avenue West, thence northerly on Epworth Boulevard to Dailey Avenue; thence a double track easterly on Daily Avenue from Epworth Boulevard to Highfield Avenue; thence a double track northeasterly on Highfield Avenue to and across Grand River Avenue to Joy Road.

(17) A double track street railway commencing at the intersection of Ferry Park Avenue with Fourteenth Street, thence easterly on Ferry Park Avenue to Holden Avenue; thence a double track on Holden Avenue southeasterly to Lincoln Avenue; thence a double track northeasterly on Lincoln Avenue to Baltimore Avenue West; thence continuing a single track on Lincoln Avenue northeasterly from Baltimore Avenue West to Milwaukee Avenue West; also a

single track easterly on Baltimore Avenue West across Woodward Avenue to Brush Street; thence a single track northerly on Brush Street from Baltimore Avenue East to Milwaukee Avenue East; also a single track from the intersection of Lincoln Avenue and Milwaukee Avenue West, easterly on Milwaukee Avenue West to and across Woodward Avenue to Brush Street; thence a double track easterly on Milwaukee Avenue East to Mt. Elliott Avenue; thence a double track on Mt. Elliott Avenue from Milwaukee Avenue East to Harper Avenue.

(18) A double track street railway commencing at the intersection of Ferry Park Avenue, with Linwood Avenue, thence northerly on Linwood Avenue to Joy Road; also commencing at the intersection of Ferry Park Avenue with Linwood Avenue, thence easterly on Ferry Park Avenue to Fourteenth Street.

57 (19) A double track street railway commencing at the intersection of Greenwood Avenue with Holden Avenue, thence northerly on Greenwood Avenue to and across the West Grand Boulevard to Hamilton Boulevard; thence continuing a double track northerly on Hamilton Boulevard to a point where the city limits of the City of Detroit intersect the city limits of the City of Highland Park.

(20) A double track street railway commencing at the intersection of Harper Avenue with Gratiot Avenue, thence easterly on Harper Avenue to Montclair Avenue; thence a double track southerly on Montclair Avenue from Harper Avenue to Shoemaker Avenue; thence a double track easterly on Shoemaker Avenue from Montclair Avenue to St. Jean Avenue; thence a double track southerly on St. Jean Avenue from Shoemaker Avenue to Jefferson Avenue East; also a double track commencing at the intersection of Warren Avenue East with St. Jean Avenue, thence westerly on Warren Avenue East to Bewick Avenue.

(21) A double track street railway commencing at the intersection of Kercheval Avenue and St. Jean Avenue, thence easterly on Kercheval Avenue to Lycaste Avenue; thence a single track southerly on Lycaste Avenue to Jefferson Avenue East; thence a single track on Jefferson Avenue East, easterly to Hart Avenue, thence a single track northerly on Hart Avenue to Kercheval Avenue; thence a single track westerly on Kercheval Avenue to Lycaste Avenue.

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Class "B" Lines.

(22) A double track street railway on Tireman Avenue commencing at the intersection of Epworth Boulevard with Tireman Avenue; thence westerly on Tireman Avenue to Wyoming Avenue (sometimes called Snyder Road); thence southerly a double track in the Township of Springwells on Wyoming Avenue to Warren Avenue West; also a double track from the intersection of the present westerly city limits with Warren Avenue West, thence westerly, through the Township of Springwells, a double track on

Warren Avenue West to Miller Road; thence southerly a double track on Miller Road to a point south of the Michigan Central Railway tracks to the proposed New Miller Road; thence southeasterly a double track on New Miller Road to Dix Avenue; also a double track commencing at the intersection of Livernois Avenue with Tireman Avenue, thence northerly on Livernois Avenue to Fenkell Avenue; thence easterly, a double track on Fenkell Avenue to Twelfth Street; thence southerly a double track on Twelfth Street from Fenkell Avenue to Davison Avenue; also commencing at the intersection of Joy Road and Linwood Avenue, a double track northerly on Linwood Avenue to Fenkell Avenue; also a double track commencing at the intersection of Davison Avenue with Livernois Avenue, thence easterly on Davison Avenue to Petoskey Avenue.

(23) A double track street railway commencing at the intersection of Holbrook Avenue with Russell Street, thence easterly on Holbrook Avenue through Hamtramck to Conant Avenue; thence southerly, a double track on Conant Avenue to Mt. Elliott Avenue in
59 Detroit; thence a double track across Mt. Elliott Avenue, easterly on Legrand Avenue to Ackley Avenue; thence southerly a double track on Ackley Avenue to Strong Avenue; thence easterly a double track on Strong Avenue to Helen Avenue; thence southerly on Helen Avenue a single track from Strong Avenue to Duncan Street; thence easterly, a single track on Duncan Street to Frontenac Boulevard; also a single track from Helen Avenue to Frontenac Boulevard, easterly on Strong Avenue; thence southerly on Frontenac Boulevard a single track to Duncan Street from Strong Avenue; thence easterly on Duncan Street a double track to Van Dyke Avenue.

(24) A double track street railway commencing at the intersection of Pennsylvania Avenue with Warren Avenue East, thence southerly on Pennsylvania Avenue to Jefferson Avenue East; thence a single track on Jefferson Avenue East, easterly to Cadillac Avenue; thence northerly a single track on Cadillac Avenue to St. Paul Avenue; thence westerly a single track on St. Paul Avenue to Pennsylvania Avenue.

(25) A double track street railway on Central Avenue from its intersection with Ferndale Avenue to Cyprus Street; thence a single track on Central Avenue from Cyprus Street to McGraw Avenue; thence a double track, easterly, on McGraw Avenue as extended, to Chopin Avenue; thence northerly a double track on Chopin Avenue to Vernor Avenue; thence easterly, a double track on Vernor Avenue to Wetherby Avenue thence northerly, a double track on Wetherby Avenue to Tireman Avenue; also a single track on Cyprus Street, westerly, from Central Avenue to Burke Avenue; thence a single track on Burke Avenue from Cyprus Street northerly to McGraw Avenue; thence a single track easterly on McGraw Avenue to Central Avenue.

(26) A double track street railway commencing at the intersection of Livernois Avenue with Fenkell Avenue, thence northerly on Livernois Avenue to Eight Mile Road; thence easterly a double track on Eight Mile Road from Livernois Avenue to Woodward Avenue.

(27) A double track street railway commencing at the intersection of Plymouth Road with Livernois Avenue, thence westerly, on Plymouth Road to the present westerly city limits.

(28) A double track street railway commencing at the intersection of Linwood Avenue with Fenkell Avenue, thence northerly on Linwood Avenue to Six Mile Road (sometimes called Palmer Boulevard West); also commencing at the intersection of Livernois

61 Avenue with Six Mile Road, thence, easterly, a double track on Six Mile Road across Woodward Avenue, continuing on Six Mile Road (sometimes called Palmer Boulevard East) to Conant Avenue; thence, southerly a double track on Conant Avenue through Hamtramck to Holbrook Avenue; also commencing at the intersection of Six Mile Road with Conant Avenue, a double track, easterly, on Six Mile Road to Connors Avenue; thence southerly, a double track on Connors Avenue to Essex Avenue; thence a single track on Essex Avenue to Navahoe Avenue; thence a single track, northerly, on Navahoe Avenue to Freud Avenue; thence westerly a single track on Freud Avenue to Connors Avenue.

(29) A double track street railway commencing at the intersection of Shoemaker Avenue with St. Jean Avenue, thence easterly, on Shoemaker Avenue to Connors Avenue; also a double track street railway commencing at the intersection of St. Jean Avenue with Warren Avenue East, thence easterly, on Warren Avenue East as extended (also called Sunderland Road and Warren Boulevard), to its intersection with the present easterly city limits at Cadieux Road.

(30) A double track street railway commencing at the intersection of Alter Road with Charlevoix Avenue, thence, northerly, on Alter Road to Harper Avenue; thence a double track westerly on Harper Avenue from Alter Road to Montclair Avenue; also commencing at the intersection of Van Dyke Avenue with Harper Avenue, thence, a single track northerly on Van Dyke Avenue from Harper Avenue to the Seven Mile Road, together with all necessary and convenient turnouts, turntables, curves, sidetracks, switches, connections, poles, wires and overhead power equipment in and
62 along the streets, avenues and public places herein designated so as to make a complete street railway system; and to make the necessary purchases of lands, machinery, engines, ties, rails, poles, wires, conduits, cars, tools and all other articles, apparatus, appliances, instruments and things necessary to construct, own, maintain and operate, and said Board of Street Railway Commissioners shall construct, own, maintain and operate in said City of Detroit for said City of Detroit and within a distance of ten miles from any portion of its corporate limits as aforesaid, a system of street railways upon the surface of the streets, avenues and public places herein

designated, and, further said Board of Street Railway Commissioners are hereby authorized for and in behalf of the City of Detroit to purchase or construct such car houses, power houses, shops, stations and such other buildings as may be required to maintain and operate said street railway system.

Section 2. That in order to authorize and empower the City of Detroit to acquire, own, maintain and operate a street railway system upon the surface of the streets, avenues and public places of the City of Detroit, and within a distance of ten miles from any portion of its corporate limits that the public convenience may require, as herein designated, for the purpose of supplying transportation to the City of Detroit and to the inhabitants thereof, and in order further to authorize and empower the City of Detroit to borrow money on the credit of the City of Detroit by the issuance of the public utility bonds of the City of Detroit in an amount not to exceed Fifteen Million (\$15,000,000) Dollars for the purpose of acquiring and owning said street railway system, this body, being the legislative body of the City of Detroit, hereby propose that the following
63 proposition be submitted to the qualified electors of the City of Detroit, both male and female, at a special election to be held in said City on Monday, the 5th day of April, A. D. 1920, which proposition shall be printed on the ballots in words and figures as follows:

Shall the City of Detroit be authorized and empowered to acquire, own, maintain and operate a street railway system upon the surface of the streets, avenues and public places of the City of Detroit, and within a distance of ten miles from any portion of its corporate limits that the public convenience may require, for the purpose of supplying transportation to the City of Detroit and the inhabitants thereof, as hereinafter designated, to wit:

Class "A" Lines.

(1) A double track street railway commencing at the intersection of Mack Avenue with Gratiot Avenue, thence westerly on Mack Avenue to Riopelle Street; thence a double track southerly on Riopelle Street to Rowena Street; thence a single track southerly on Riopelle Street to Eliot Street; thence westerly, a single track on Eliot Street to St. Antoine Street; also a single track from the intersection of Rowena Street and Riopelle Street, westerly on Rowena Street to St. Antoine Street; thence a single track on St. Antoine Street southerly to Eliot Street; thence a double track on Eliot Street westerly to Brush Street; thence a double track southerly and diagonally across Brush Street on Eliot Street to John R Street; thence a single track on Eliot Street westerly and across Woodward Avenue to Stimson Avenue; thence westerly on Stimson Avenue a single track to Cass Avenue; thence northerly a single track
64 on Cass Avenue to Davenport Street; also a single track from the intersection of Eliot Street and John R Street; northerly on John R Street to Rowena Street; thence westerly, a single track

on Rowena Street across Woodward Avenue to Davenport Street and westerly on Davenport Street to Cass Avenue; thence northerly, a double track on Cass Avenue to Selden Avenue; thence westerly, a double track on Selden Avenue to Lincoln Avenue; thence northerly, a double track on Lincoln Avenue to Canfield Avenue West; thence westerly on Canfield Avenue West, a double track to Grand River Avenue; thence a double track on and across Grand River Avenue to Buchanan Street; thence westerly a double track on Buchanan Street to Scotten Avenue; thence a double track northerly on Scotten Avenue to Buchanan Street; thence westerly, a double track on Buchanan Street to Thirty-Fifth Street.

(2) A double track street railway on McGraw Avenue, commencing at its intersection with Junction Avenue; thence easterly on McGraw Avenue to Linwood Avenue; thence northerly a double track on Linwood Avenue to Ferry Park Avenue.

(3) A double track street railway commencing at the intersection of Moran Street with Milwaukee Avenue East; thence southerly on Moran Street to Palmer Avenue East; also commencing at the intersection of Van Dyke Avenue with Palmer Avenue East; thence westerly a double track on Palmer Avenue East to McDougall Avenue; thence southerly on McDougall Avenue a double track from Palmer Avenue East to Charlevoix Avenue; thence easterly on Charlevoix Avenue, a double track to Crane Avenue; thence southerly on Crane Avenue a double track to Charlevoix Avenue, thence continuing easterly a double track on Charlevoix Avenue to Pennsylvania Avenue; thence northerly on Pennsylvania Avenue a double track to Charlevoix Avenue; thence continuing easterly a double track on Charlevoix Avenue to St. Clair Avenue; thence a double track northerly on St. Clair Avenue to Charlevoix Avenue; thence easterly a double track on Charlevoix Avenue to Alter Road; also commencing at the intersection of Harper Avenue and Van Dyke Avenue; thence southerly a double track on Van Dyke Avenue to Jefferson Avenue East; thence westerly a single track on Jefferson Avenue East to Helen Avenue; also a double track easterly on Lafayette Avenue East from Baldwin Avenue to Van Dyke Avenue.

(4) A double track street railway commencing at the intersection of Joy Road with Grand River Avenue; thence easterly on Joy Road to Linwood Avenue; thence southerly a double track on Linwood Avenue to Clairmont Avenue; thence easterly on Clairmont Avenue a double track to Woodward Avenue; thence diagonally across Woodward Avenue to Owen Avenue; thence easterly a double track on Owen Avenue to Russell Street; thence southerly a double track on Russell Street to Milwaukee Avenue East.

(5) A double track street railway commencing at the intersection of Petoskey Avenue with Joy Road; thence northerly on Petoskey Avenue to Davison Avenue; also commencing from the intersection of Petoskey Avenue and Davison Avenue, a double track east-

erly on Davison Avenue to Twelfth Street; thence southerly on Twelfth Street a double track to Elmhurst Avenue.

(6) A double track street railway commencing at the intersection of Burlingame Avenue with Twelfth Street; thence easterly on Burlingame Avenue to its intersection with Hamilton Boulevard.

66 (7) A single track street railway commencing at the intersection of Kulick Avenue with Junction Avenue; thence westerly on Kulick Avenue to Thirty-Fifth Street; thence northerly on Thirty-Fifth Street a single track to and across Michigan Avenue.

(8) A double track street railway commencing at the intersection of Artillery Avenue and Jefferson Avenue West; thence northerly on Artillery Avenue to Fort Street West.

(9) A single track street railway commencing at the intersection of Duncan Street with Van Dyke Avenue; thence easterly on Duncan Street to Crane Avenue; thence northerly a single track on Crane Avenue to Harper Avenue; thence easterly from Crane Avenue on Harper Avenue a double track to and across Gratiot Avenue; also a single track commencing at the intersection of Crane Avenue and Harper Avenue; thence westerly on Harper Avenue to Van Dyke Avenue; also a double track commencing at the intersection of Warren Avenue East with Bewick Avenue; thence westerly on Warren Avenue East to Pennsylvania Avenue; thence a double track commencing at the intersection of Pennsylvania Avenue with Warren Avenue East; northerly on Pennsylvania Avenue to Gratiot Avenue; also single tracks connecting tracks on Harper Avenue through first two alleys approximately parallel with and southeast of Gratiot Avenue.

(10) A double track street railway commencing at the intersection of Twelfth Street with Davison Avenue; thence easterly on Davison Avenue to its intersection with the City Limits of the City of Highland Park; thence continuing on Davison Avenue easterly to Hamilton Boulevard; thence diagonally across Hamilton Boulevard continuing on Davison Avenue to Woodward Avenue;

67 thence easterly across Woodward Avenue to Windemere Avenue and easterly on Windemere Avenue to John R. Street; also a double track commencing at the intersection of John R. Street with Victor Avenue in Highland Park; thence southerly on John R. Street to its intersection with the southerly City Limits of the City of Highland Park; thence continuing on John R. Street southerly a double track to Holbrook Avenue; thence diagonally across Holbrook Avenue to John R. Street and thence continuing southerly on John R. Street to its intersection with Baltimore Avenue East.

(11) A double track street railway commencing at the intersection of Artillery Avenue with West Jefferson Avenue; thence easterly on West Jefferson Avenue to Clark Street; thence a double track northerly on Clark Street to Fort Street West; also a double track

commencing at the intersection of Artillery Avenue with Fort Street West; thence easterly on West Fort Street to and across Woodward Avenue to Cadillac Square; thence a single track on the southerly part of Cadillac Square to Randolph Street; also a single track on the northerly part of Cadillac Square from Woodward Avenue to Bates Street; thence northerly a single track on Bates Street from Cadillac Square to Randolph Street; also a single track on Randolph Street from Cadillac Square to Monroe Avenue; also a single track easterly on Monroe Avenue from Randolph Street to Elmwood Avenue; thence a single track on Elmwood Avenue southerly from Monroe Avenue to Lafayette Avenue East; thence a double track on Lafayette Avenue East from Elmwood Avenue easterly to Baldwin Avenue; also a single track on Helen Avenue, northerly from Jefferson Avenue East to Lafayette Avenue East; also a single track westerly from Elmwood Avenue to Randolph Street on Lafayette Avenue East.

(12) A double track street railway commencing at the foot of Woodward Avenue north of the Detroit River; thence northerly on Woodward Avenue to its intersection with Milwaukee Avenue.

(13) A double track street railway commencing at the intersection of Twelfth Street with Ferry Park Avenue; thence northerly on Twelfth Street to Elmhurst Avenue.

(14) A double track street railway commencing at the intersection of Warren Avenue West with Junction Avenue; thence westerly on Warren Avenue West to the present westerly City Limits.

(15) A double track street railway commencing at the intersection of Junction Avenue with West Fort Street; thence northerly on Junction Avenue to and across Michigan Avenue; thence a single track northerly on Junction Avenue from Michigan Avenue to Devereaux Street; also a single track northerly on Thirty-fifth Street from Michigan Avenue to Devereaux Street; thence a single track easterly on Devereaux Street to Junction Avenue; thence a double track northerly on Junction Avenue from Devereaux Street to Warren Avenue West.

(16) A double track street railway commencing at the intersection of Epworth Boulevard with Warren Avenue West; thence northerly on Epworth Boulevard to Dailey Avenue; thence a double track easterly on Dailey Avenue from Epworth Boulevard to Highfield Avenue; thence a double track northeasterly on Highfield Avenue to and across Grand River Avenue to Joy Road.

(17) A double track street railway commencing at the intersection of Ferry Park Avenue with Fourteenth Street; thence easterly on Ferry Park Avenue to Holden Avenue; thence a double track on Holden Avenue southeasterly to Lincoln Avenue; thence a double track northeasterly on Lincoln Avenue to Baltimore Avenue West; thence continuing a single track on Lincoln Avenue northeasterly from Baltimore Avenue West to Milwaukee Avenue

West; also a single track easterly on Baltimore Avenue West across Woodward Avenue to Brush Street; thence a single track northerly on Brush Street from Baltimore Avenue East to Milwaukee Avenue East; also a single track from the intersection of Lincoln Avenue and Milwaukee Avenue West; easterly on Milwaukee Avenue West to and across Woodward Avenue to Brush Street; thence a double track easterly on Milwaukee Avenue East to Mt. Elliott Avenue; thence a double track on Mt. Elliott Avenue from Milwaukee East to Harper Avenue.

(18) A double track street railway commencing at the intersection of Ferry Park Avenue with Linwood Avenue; thence northerly on Linwood Avenue to Joy Road; also commencing at the intersection of Ferry Park Avenue with Linwood Avenue; thence easterly on Ferry Park Avenue to Fourteenth Street.

(19) A double track street railway commencing at the intersection of Greenwood Avenue with Holden Avenue; thence northerly on Greenwood Avenue to and across the West Grand Boulevard to Hamilton Boulevard; thence continuing a double track northerly on Hamilton Boulevard to a point where the City Limits of the City of Detroit intersect the City Limits of the City of Highland Park.

70 (20) A double track street railway commencing at the intersection of Harper Avenue with Gratiot Avenue; thence easterly on Harper Avenue to Montclair Avenue; thence a double track southerly on Montclair Avenue from Harper Avenue to Shoemaker Avenue; thence a double track easterly on Shoemaker Avenue from Montclair Avenue to St. Jean Avenue; thence a double track southerly on St. Jean Avenue from Shoemaker Avenue to Jefferson Avenue East; also a double track commencing at the intersection of Warren Avenue East with St. Jean Avenue; thence westerly on Warren Avenue East to Bewick Avenue.

(21) A double track street railway commencing at the intersection of Kercheval Avenue and St. Jean Avenue; thence easterly on Kercheval Avenue to Lycaste Avenue; thence a single track southerly on Lycaste Avenue to Jefferson Avenue East; thence a single track on Jefferson Avenue East easterly to Hart Avenue; thence a single track northerly on Hart Avenue to Kercheval Avenue; thence a single track westerly on Kercheval Avenue to Lycaste Avenue.

71

Class "B" Lines.

(22) A double track street railway on Tireman Avenue commencing at the intersection of Epworth Boulevard with Tireman Avenue; thence westerly on Tireman Avenue to Wyoming Avenue (sometimes called Snyder Road); thence southerly a double track in the Township of Springwells on Wyoming Avenue to Warren Avenue West; also a double track from the intersection of the present westerly City Limits with Warren Avenue West; thence westerly through the Township of Springwells, a double track on Warren

Avenue West to Miller Road; thence southerly a double track on Miller Road to a point south of the Michigan Central Railway tracks to the proposed new Miller Road; thence southeasterly a double track on the New Miller Road to Dix Avenue; also a double track commencing at the intersection of Livernois Avenue with Tireman Avenue; thence northerly on Livernois Avenue to Fenkell Avenue; thence easterly a double track on Fenkell Avenue to Twelfth Street; thence southerly a double track on Twelfth Street from Fenkell Avenue to Davison Avenue; also commencing at the intersection of Joy Road and Linwood Avenue, a double track northerly on Linwood Avenue to Fenkell Avenue; also a double track commencing at the intersection of Davison Avenue with Livernois Avenue; thence easterly on Davison Avenue to Petoskey Avenue.

(23) A double track street railway commencing at the intersection of Holbrook Avenue with Russell Street; thence easterly on Holbrook Avenue through Hamtramck to Conant Avenue; thence southerly a double track on Conant Avenue to Mt. Elliott Avenue in Detroit; thence a double track across Mt. Elliott Avenue, easterly on Legrand Avenue to Ackley Avenue; thence southerly a double track on Ackley Avenue to Strong Avenue; thence easterly a double track on Strong Avenue to Helen Avenue; thence southerly on Helen Avenue, a single track from Strong Avenue to Duncan Street; thence easterly, a single track on Duncan Street to Frontenac Boulevard; also a single track from Helen Avenue to Frontenac Boulevard, easterly, on Strong Avenue; thence southerly on Frontenac Boulevard, a single track to Duncan Street from Strong Avenue; thence easterly on Duncan Street, a double track to Van Dyke Avenue.

(24) A double track street railway commencing at the intersection of Pennsylvania Avenue with Warren Avenue East, thence southerly on Pennsylvania Avenue to Jefferson Avenue East; thence a single track on Jefferson Avenue East, easterly to Cadillac Avenue; thence northerly a single track on Cadillac Avenue to St. Paul Avenue; thence westerly, a single track on St. Paul Avenue to Pennsylvania Avenue.

72

Class "C" Lines.

(25) A double track street railway on Central Avenue from its intersection with Ferndale Avenue to Cyprus Street; thence a single track on Central Avenue, from Cyprus Street, to McGraw Avenue; thence a double track easterly, on McGraw Avenue as extended, to Chopin Avenue; thence northerly a double track on Chopin Avenue to Vernor Avenue; thence easterly, a double track on Vernor Avenue to Wetherby Avenue; thence northerly, a double track on Wetherby Avenue to Tireman Avenue; also a single track on Cyprus Street, westerly, from Central Avenue to Burke Avenue; thence a single track on Burke Avenue from Cyprus Street northerly to McGraw Avenue; thence a single track easterly on McGraw Avenue to Central Avenue.

(26) A double track street railway commencing at the intersection of Livernois Avenue with Fenkell Avenue, thence northerly on Livernois Avenue to Eight Mile Road; thence easterly a double track on Eight Mile Road from Livernois Avenue to Woodward Avenue.

(27) A double track street railway commencing at the intersection of Plymouth Road with Livernois Avenue, thence, westerly, on Plymouth Road to the present westerly city limits.

(28) A double track street railway commencing at the intersection of Linwood Avenue with Fenkell Avenue; thence northerly on Linwood Avenue to Six Mile Road (sometimes called Palmer Boulevard West); also commencing at the intersection of Livernois Avenue with Six Mile Road, thence, easterly, a double track on Six Mile Road across Woodward Avenue continuing on Six Mile Road (sometimes called Palmer Boulevard East) to Conant Avenue; thence southerly, a double track on Conant Avenue through Hamtramck to Holbrook Avenue; also commencing at the intersection of Six Mile Road with Conant Avenue, a double track, easterly on Six Mile Road to Connors Avenue; thence southerly, a double track on Connors Avenue to Essex Avenue; thence a single track on Essex Avenue to Navahoe Avenue; thence a single track, northerly on Navahoe Avenue to Freud Avenue; thence westerly a single track on Freud Avenue to Connors Avenue.

(29) A double track street railway commencing at the intersection of Shoemaker Avenue with St. Jean Avenue, thence easterly on Shoemaker Avenue to Connors Avenue; also a double track street railway commencing at the intersection of St. Jean Avenue with Warren Avenue, East, thence easterly on Warren Avenue East as extended (also called Sunderland Road and Warren Boulevard) to its intersection with the present Easterly city limits at Cadieux Road.

(30) A double track street railway commencing at the intersection of Alter Road with Charlevoix Avenue, thence northerly on Alter Road to Harper Avenue; thence a double track westerly on Harper Avenue from Alter Road to Montclair Avenue; also commencing at the intersection of Van Dyke Avenue with Harper Avenue; thence a single track northerly on Van Dyke Avenue from Harper Avenue to the Seven Mile Road.

Together with all necessary and convenient turnouts, turntables, curves, side tracks, switches, connections, poles, wires and overhead power equipment in and along the streets, avenues, and public places herein designated so as to make a complete street railway system; and to make the necessary purchases of lands, machinery, engines, ties, rails, poles, wires, conduits, cars, tools and all other articles, apparatus, appliances, instruments and things necessary to construct, own, maintain and operate a street railway system upon the surface of the streets, avenues and public places herein designated and to purchase or construct such car houses, power houses, shops, stations and such other buildings as may be required to maintain and operate said street railway system and to

borrow money on the credit of the City of Detroit by the issuance of the public utility bonds of the City of Detroit up to an amount not to exceed Fifteen Million (\$15,000,000.00) Dollars for the purpose of so acquiring and owning said street railway system?

YES ☐

NO ☐

Section 3. That in order to carry out the purposes of this ordinance, this body, being the legislative body of the City of Detroit, hereby declare that a special election of the qualified electors of the City of Detroit, both male and female, shall be held and there shall be submitted to the qualified electors thereof, said proposition to authorize and empower the City of Detroit to acquire, own, maintain and operate said street railway system and to borrow money on the credit of the City of Detroit by the issuance of the public utility bonds of the City of Detroit in a sum not to exceed Fifteen Million (\$15,000,000.00) Dollars for the purpose of acquiring, and owning said street railway system; and that the said special election shall be held on Monday, the Fifth day of April, A. D. 1920, in said City of Detroit, and that the polls shall be opened at seven 76 o'clock in the forenoon and continue open until eight o'clock in the evening (Detroit official time); and the City Clerk is hereby authorized and directed to give legal notice of said special election and registration thereon; and, further, that the election houses used for the purpose of holding general elections and primary elections are hereby designated as the places to be used for the purpose of said special election, and that the said special election shall be conducted and the returns canvassed as nearly as may be in the manner of any regular election.

Section 4. If any clause in this ordinance shall for any reason be adjudged or decreed to be invalid by any Court of competent jurisdiction, such judgment or decree shall not effect, impair or invalidate the remainder of this ordinance, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered.

Section 5. This ordinance is ordered to take effect thirty (30) days after its approval by the mayor.

77

EXHIBIT 4.

At a Session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the twenty-eighth day of February, in the year of our Lord one thousand nine hundred and thirteen.

Present: The Honorable Joseph H. Steere, Chief Justice; Joseph B. Moore, Aaron V. McAlvay, Flavius L. Brooke, John W. Stone, Russell C. Ostrander, John E. Bird, Associate Justices.

No. 25063.

THE CITY OF DETROIT, Complainant,

VS.

DETROIT UNITED RAILWAY, Defendant.

This cause coming on to be heard *de novo* upon the pleadings and proofs therein and having been duly argued by counsel and the Court having given due consideration to the same, it is hereby ordered, adjudged and decreed as follows:

1. That all contract rights, all privileges and all franchise rights of the Detroit United Railway upon the following named streets of the City of Detroit, to-wit: On Fort Street west, beginning at Clark Avenue, thence westerly to Artillery Avenue, expired by limitation on July 24, A. D. 1910; and that said Detroit United Railway has no rights or privileges upon or in said streets.

78 2. That all contract rights, all privileges and all franchise rights of the Detroit United Railway upon the following named streets in the City of Detroit, to wit: On Fort Street west, from the west line of the Porter Farm across Woodward Avenue to Cadillac Square; on Cadillac Square (south part) from Woodward Avenue to Randolph Street; on Cadillac Square (north part) from Woodward Avenue to Bates Street; on Bates Street from Cadillac Square to Randolph Street; on Randolph Street from Monroe Avenue to Cadillac Square; on Monroe Avenue from Randolph Street to Elmwood Avenue; on Elmwood Avenue from Monroe Avenue to Champlain Street; on Champlain Street from Randolph to Baldwin Avenue; on Helen Avenue from Jefferson Avenue to Champlain Street, expired by limitation on June 30, A. D. 1910, and that the Detroit United Railway has no rights or privileges upon or in said streets; provided the rights of the defendant, as assignee and successor in title of the Detroit Railway on Bates Street from Cadillac Square to Farmer Street and on Champlain Street from Concord to Field Avenue, shall not be required, impaired or interfered with.

3. That all contract rights, all privileges and all franchise rights of the Detroit United Railway upon the following named streets in the City of Detroit, to wit: on Fort Street west, beginning at a point on said street where the same intersects the west line of the Porter Farm, thence westerly on said Fort Street west to Clarke Avenue, thence southerly on Clarke Avenue to West Jefferson Avenue, thence westerly on said Avenue to a point opposite Fort Wayne, to wit: Artillery Avenue, expired by limitation on June 17, A. D., 1910; and that said Detroit United Railway has no rights or privileges upon or in said streets.

79 4. That the defendant, the Detroit United Railway, refused to accept or to comply with the terms sought to be imposed

by the resolutions of the Common Council of the City of Detroit (of which exhibits T, S and Q, attached to the bill of complaint, are copies) for the operation of its tracks on said streets wherein its rights have expired, as hereinbefore set forth; that, therefore, the terms and conditions of operation stated in said resolutions never became binding upon the defendant; that the defendant company is not liable to make the payments for the use of said streets as required by the terms of said resolutions, or any of them.

5. That by reason of said defendant's refusal to comply with the terms of the resolutions of the Common Council of the City of Detroit (of which T, S and Q set forth in the bill of complaint, are copies) the defendant is without any rights in or to said streets, and it has been and is a trespasser in continuing to occupy them and operate cars thereon.

6. That defendant continues to be the owner of all its property in the public streets used in the maintenance and operation of its railway, and that complainant may by resolution of its Common Council require said defendant to cease the operation of its cars upon and over said streets and to remove therefrom all of said property; that if the complainant shall by resolution of its Common Council, as aforesaid, require and direct the cessation of street railway operation upon said streets, said defendant shall cease said operation within ten days from the time it receives notice of said resolution, unless said resolution prescribes a longer time or said time be extended by said Common Council; that if the complainant shall by resolution

80 of the Common Council require the removal of the defendant's property from said streets, such removal shall be effected by said defendant within ninety days after notice of said resolution, unless said resolution give a longer time or said time be extended by said Common Council by a like resolution. In removing said property from said streets defendant shall not disturb the pavement thereon more than is necessary and shall keep said street open for public travel and shall promptly restore the pavement in fit condition for public travel under the supervision and to the satisfaction of the Department of Public Works of the City of Detroit.

7. It is further decreed that in case of the passage of such resolution, if the defendant shall not cease operation of its cars upon said streets within the time allowed therefor after notice of such resolution or within any extended time that may be allowed, then the Circuit Court of the County of Wayne, in Chancery, to which the case is remanded, upon application of complainant shall forthwith issue its peremptory writ of injunction to enforce the cessation of operation of cars upon said streets, and if the defendant shall not remove all of its property from said streets within the time allowed therefor after notice of such resolution, or within any extended time that may be allowed, then the said Circuit Court in Chancery, upon like application shall forthwith issue its Writ of Assistance to compel and effect the removal of the defendant's property from said street.

8. And it is further decreed that the said complainant shall recover its costs of both courts in this suit to be taxed against said defendant, and that it have execution therefor.

81

EXHIBIT 4-a.

Whereas, The Mayor and Common Council on the 5th day of August, received from the Detroit United Railway the following letter:

"To the Honorable Mayor and Common Council of the City of Detroit:

"GENTLEMEN:

Acting for the Detroit United Railway, I have had a full conference with James Couzens, Esq., of the street railway commission, for the purpose and in an effort to reach an understanding or basis upon which an adjustment of the differences between the city and the company could be reached. As a result of such conference, the Detroit United Railway is prepared to agree as follows:

First. On or before August 15th, we will put in effect rates of fares as follows:

(1) Seven tickets for 25 cents, good on all lines in the City of Detroit and within the one-fare zone, so-called, during 24 hours of the day.

(2) Upon the payment of a seven-for-a-quarter ticket or a five-cent fare, a transfer shall be issued to any connecting or intersecting line according to the existing custom.

(3) The existing provisions for workingmen's tickets—8 tickets for 25 cents—to remain unchanged.

(4) The rates of fare now in effect on the Detroit Railway lines to remain unchanged, except that payment of a seven-for-a-quarter ticket shall be received for a fare, including a transfer on any other line.

82 (5) A single cash fare shall be five cents.

Second. Detroit United Railway shall do all paving on all lines except where existing franchises otherwise provide.

Third. Detroit United Railway will construct the proposed cross-town line on or near Junction Avenue, in connection with existing tracks; also connect the Mack avenue and Myrtle street line as heretofore proposed, and will extend the Kercheval avenue line easterly to St. Jean avenue; thence southerly to Jefferson avenue; and also make the necessary extensions to the new Michigan Central terminal station—all to be done on streets and locations to be approved by the common council. This work shall be started in 1913 and completed as soon as practicable, and all such lines and extensions shall

be constructed and operated under the same terms, in substance as the Hamilton boulevard extension, so-called, was constructed and is being operated.

Fourth. The Detroit United Railway will pay to the treasurer of the City of Detroit, on or before August 15, 1913, seventy-five thousand dollars (\$75,000) for the privileges exercised by it on the Fort street lines since July 24, 1910.

Fifth. While we have understood that payment of the \$300.00 per day under the resolution of the Common Council exempted the railway from the payment of the city taxes involved herein, nevertheless, for the purpose of reaching an adjustment of differences, the Detroit United Railway will pay to the treasurer of the City of Detroit the back city taxes assessed against it in the years 1910, 1911, 1912, as per the city treasurer's books, including interest and penalties as fixed by law, up to August 15, 1913—such payment to be made in 90 days, or sooner, from the 15th day of August, 1913, with interest at six per cent (6%) per annum from August 15, 1913, to the date of payment. This does not in any wise affect the liability of the Detroit United Railway for the taxes assessed against it for the year 1913.

Sixth. In consideration of the foregoing, the Detroit United Railway expects and understands that it shall be relieved of the payment of three hundred dollars (\$300.00) per day fixed by the resolution of the Common Council adopted on October 26, 1909, approved November 2, 1909.

Seventh. It is further understood that no existing rights of either the City of Detroit or the Detroit United Railway shall be impaired or affected in any wise by this temporary arrangement, except as herein explicitly stated, and that it is a day-to-day arrangement only.

Trusting that these terms will prove satisfactory to yourself and to the Honorable Common Council, I remain,

J. C. HUTCHINS,
President Detroit United Railway."

And, whereas the Mayor and Common Council have this day received the following supplementary communication from the Detroit United Railway:

"To the Honorable Mayor and Common Council of the City of Detroit:

"GENTLEMEN:

Referring to my communication to you submitted at the meeting of your Honorable Council on the evening of Tuesday, August 5th, 1913, I beg to say that in the hurry of preparation a slight error was made in the fifth subdivision of said letter, and I beg that you

amend the letter incorporating the following as paragraph five in place of five as written:

84 'While we have understood that the payment of the \$300.00 per day, under the resolution of the Common Council exempted the Railway from the payment of the City Taxes involved herein, nevertheless for the purpose of reaching an adjustment of differences, the Detroit United Railway will pay to the Treasurer of the City of Detroit the back City Taxes assessed against it in the years 1910, 1911, 1912, as per the City Treasurer's books, including interest and penalties as fixed by law. Such payment shall be made in 90 days or sooner after the 15th day of August, 1913, and shall include all interest and penalties as fixed by law up to the date of payment. This does not in any wise affect the liability of the Detroit United Railway for the taxes assessed against it for the year 1913.'

This error was made in favor of the Detroit United Railway and I have the honor to beg that the communication be amended as I have noted.

Very respectfully yours,

J. C. HUTCHINS,
President Detroit United Railway.

Aug. 7, 1913.

Now, therefore, be it resolved that the terms set forth in said letters be, and they are hereby accepted, and in consideration of the fulfillment of the terms of said letters, and while the Detroit United Railway is actually operating under the terms thereof and faithfully observing same, the Detroit United Railway shall not be required to pay the said three hundred dollars per day provided for in said resolution of the Common Council adopted October 26, 1909, and approved November 2, 1909, but it is hereby expressly relieved of such payments;

85 And, further, be it resolved that while this resolution shall be in force, the enforcement of the decree in the case of City of Detroit against Detroit United Railway, No. 37,446, in the Circuit Court for the County of Wayne in Chancery, known as the Fort Street rental case, shall be suspended and immediately after repeal of this resolution, the present existing status as to such decree shall be restored, and the city may at once enforce the terms of said decree, the same as if this resolution were not passed, and when this resolution takes effect, an order shall simultaneously be entered in said cause by consent of parties to the above effect.

And be it further resolved that this resolution may be repealed at any time by the Common Council.

EXHIBIT 4-B.

An Ordinance to Fix and Establish Maximum Rates of Fares and Charges which may be Exacted and Received by Persons, Corporations or Partnerships Operating Street Railways for the Carriage of Passengers within the City of Detroit, and to Fix a Penalty for the Violation Thereof.

It is Hereby Ordained by the People of the City of Detroit:

Section 1. No person, partnership or corporation operating a street railway on the streets of the City of Detroit for the carriage of passengers for hire, shall charge more than five cents for a single ride, or six tickets for 25 cents, per person for one continuous trip within the city over any line which is now operated or shall hereafter be operated without a franchise fixing the rate of fare.

86 Section 2. No such person, partnership or corporation shall charge a higher rate of fare upon any line now or hereafter operated under a franchise contract than is fixed by such franchise.

Section 3. Between the hours of five and six-thirty a. m. and four forty-five and five forty-five p. m. tickets in strips of eight for twenty-five cents shall be sold on all cars on all lines except where such sale would be contrary to the terms of a franchise contract, which tickets shall entitle the holder to the same rights between said hours as the payment of a five cent fare would.

Section 4. Where a trip is over two or more lines, whether franchise lines or not, the maximum fare shall be five cents, and no transfer fee shall be exacted which raises the total charge to more than five cents or six for 25 cents.

Section 5. A continuous trip means one journey from point to point within the city, whether the same is made upon one car or one line or by means of transferring from car to car or from line to line. Each such person, partnership or corporation, and the officers, agents, servants and employees thereof, shall, upon demand, furnish proper transfers to carry into effect the provisions of this section. The provisions of this Ordinance shall not be construed as an attempt to impair the obligation of any valid contract, but shall apply to and govern all such street railway passenger traffic in the city, except where the same is governed by the provisions of such contract.

Section 6. Any such person, partnership or corporation which shall violate the provisions of this Ordinance, or shall attempt to do so, and any officer, agent, servant or employee who shall
87 order or direct any such violation or attempted violation of the provisions of this Ordinance, shall be guilty of an offense, and upon conviction shall be fined not to exceed five hundred dollars, or imprisoned in the Detroit House of Correction for not to exceed ninety days, or shall be both fined and imprisoned in the discretion of the court, for each violation.

Section 7. This Ordinance is passed for the public welfare in the case of an emergency involving the peace, health and safety of the people of the city, and it is ordered to take immediate effect. It may be amended or repealed at any time by the Common Council of the City of Detroit. Unless so amended or repealed it shall remain in force for one year from August 9, 1918.

Extracts From Bill of Complaint Filed in the Circuit Court for the County of Wayne, in Chancery, by the City of Detroit Against The Detroit United Railway and Certain of its Officers, Being Chancery File No. 70,247.

Seventh. Plaintiff alleges that notwithstanding the obligation placed upon it by said franchises, the defendant did absolutely cease the operation of its cars on the 8th day of June, A. D. 1919, about 4:00 o'clock A. M. and by reason of its cessation of the operation of its cars it has paralyzed the industrial and commercial interests of the City of Detroit. Defendant discontinued the operation of its cars without cause or default on the part of the City of Detroit.

Eighth. Plaintiff further alleges that it is a city with a population of approximately one million inhabitants and is largely dependent for its transportation from the operation of the said Railway system of the Defendant, The Detroit United Railway, upon the streets, avenues and public places named in said mentioned ordinances or franchise.

The said system of street railway serves a large portion of the population of the City of Detroit and is extensively used by the citizens thereof in going to and from their places of employment in the industrial, business and manufacturing plants and establishments within the City of Detroit. That a large portion of the population of the City of Detroit live long distances from their places of employment and business and are mainly dependent upon the street car service provided by said street railway system, and that the discontinuance of the service has resulted in depriving such citizens hereinto mentioned and has entailed hardships and expense to them by reason thereof.

If said street railway system is not operated immediately by the said defendants, the residents of the City of Detroit using said line of Railway will continue to be deprived of the facilities provided for under the terms of the franchises and contracts hereintofore mentioned and made a part hereof.

90

EXHIBIT 4-D.

STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne, In Chancery.

No. 70247.

THE CITY OF DETROIT, Complainant,

vs.

DETROIT UNITED RAILWAY et al., Defendant.

At a Session of said Court Continued and Held in Circuit Court Room No. 7 of the Wayne Circuit Court Rooms, County Building, City of Detroit, Wayne County, Michigan, on Wednesday the 11th day of June, A. D., 1919.

Present, the Honorable Adolph F. Marschner, Circuit Judge.

The matters involved in the application of the plaintiff under its bill of complaint filed herein asking that the defendant company be required to operate its street railway system in the City of Detroit or for the appointment of a receiver, came on for hearing, all parties thereto being represented by their respective counsel. The Court, upon consideration of the interest of the parties to said case and the public, orders and decrees as follows:

91 1. That the defendant company forthwith take steps to put in operation and to commence the operation of its street railway system within the one fare zone within the City of Detroit and to carry passengers upon the cars operated upon said system within said one fare zone for a cash fare of five cents for each passenger, to include the right of any passenger to a transfer from one line to another anywhere within said one fare zone district.

2. It appearing that the matter in controversy between the City and the defendant Railway Company involves the question of the sufficiency of a five cent fare without a right of the company to charge an additional one cent for transfer, the Court for the purpose of having this matter equitably considered and determined adjudges and decrees that a board of arbitration be created by the parties to determine a reasonable and fair rate of fare for the carriage of passengers by the defendant Railway Company based upon the cost of the company of rendering the service required by the public through its street railway system, such board to take into consideration in determining such reasonable rate of fare such question and all such questions as will enable it to fix a reasonable rate of fare, such determination to be made as soon after the end of three months as possible. Such board of arbitration shall be created by each of the parties, the City of Detroit and Detroit United Railway, naming

one member of said board of arbitration within thirty days from the date hereof, the third member thereof to be selected by the two arbitrators so named, and in the event of such two arbitrators so named by the parties being unable or failing to agree within five days after their appointment upon the selection of such third member of such board of arbitration, then such third member of such board of arbitration shall be selected by the following four

92 Circuit Judges for the Circuit Court for the County of Wayne, in Chancery; Judges Hosmer, Mandell, Codd and Marschner.

3. The board of arbitrators so created shall determine whether there shall be an increase of the rate of five (5) cents herein tentatively fixed after a three months' trial taking into consideration all loss if any suffered by the Company during such period and making allowance therefor in any new rate established for said zone; provided, however, that such new rate shall in no event be greater than the equivalent of a five cent fare plus one cent for a transfer for a six months' period computed on the basis of the transfers actually used during the first three months of the year 1919. The rate of fare and the other provisions herein shall not extend beyond a period of six months from the date hereof unless otherwise mutually agreed between the parties, except as provided in paragraph six hereof.

4. This order in no manner affects or is intended to affect any of the fundamental rights or contractual rights of the parties in and to the streets of the City of Detroit as they exist at the present time, the intention being simply by the making of this order to provide for a rate of fare under which cars will be operated at the present and is to be considered only as a temporary solution of the problem before the Court.

5. The Court hereby retains jurisdiction of the subject matter to make such further and other order or decree as may be necessary or proper in the premises.

6. If the determination as to whether on the five cent fare the company suffers a loss, in that the income resulting therefrom for such period proves insufficient to pay the cost of providing the services required by the public, such loss shall be compensated

93 for as above herein provided down to the time that such determination shall be made, provided such rates shall continue long enough to meet the loss, if any, above specified but not to exceed nine months from date hereof.

7. The decision of a majority of the arbitrators shall be binding on the parties.

Circuit Judge.

EXHIBIT 4e.

By Councilman Nagel:

Whereas, a cessation of street car service occurred in the City of Detroit through a strike of the platform employees, so-called, of the

Detroit United Railway, on the morning of Sunday, the 8th day of June, A. D. 1919, by reason of the refusal of the Detroit United Railway to accept the terms of an offer of the City of Detroit as provided in a resolution of this Body passed on Friday, June 6, 1919, which cessation of street car service was detrimental to the economic interests of the City, and created a serious transportation crisis, and

Whereas, the City of Detroit, by reason thereof, instituted a suit in the Wayne County Circuit Court in Chancery to compel a resumption of street car service within the City or for the appointment of a receiver of the assets of the Detroit United Railway and a hearing of said application duly came on before the Honorable Adolph F. Marschner, Presiding Circuit Judge, on the afternoon of June 11th, 1919, at which hearing were present Mayor James Couzens, and other representatives of the City's legislative and legal departments, and

Whereas, as a result of said proceedings and the extended conference held thereon between the representatives of the City and the Detroit United Railway, an order and decree was on said date entered by the Court therein requiring the Detroit United Railway to immediately resume the operation of its street car lines within the City, and making other provisions relative to the subject matter involved, all of which appear in a copy of said order and decree this day transmitted to this body by the Mayor, and street car service having been resumed in the City of Detroit by the Detroit United Railway under said order:

Therefore be it Resolved, That the action of the Mayor and the Legal Department of the City of Detroit in connection therewith as a solution to the serious emergency situation confronting the City be and the same is hereby approved and that this body proceed with all responsible despatch (the importance of the matter being considered) to select an arbitrator for and in behalf of the City of Detroit as provided in said order and decree and to communicate the name of its arbitrator so selected to the Detroit United Railway when determined upon.

95

EXHIBIT 5.

To the Honorable the Common Council:

GENTLEMEN:

Relative to the railway ordinance, providing for an independent system, to be presented to your body tonight, I wish to draw your attention to the assurance of service-at-once, as well as genuine service-at-cost. The measure provides for the immediate construction of a unified, independent system, self-sustaining and laid out on permanent lines, yet capable of being linked up with remaining privately owned lines, in part or in whole, should conditions warrant such an undertaking. Every element of waste and duplication has been reduced to the minimum.

Likewise, I wish to call your attention to the fact that herein is contained a formula for smoothing out the long standing snarls in

Detroit's traffic system and affording the citizens their desired freedom from congestion at the heart of the city. The plan has been developed with the idea of raising the center of our traffic from its unnatural position near the southern boundary of our city to the Grand Boulevard, and affording the long-suffering industrial population an opportunity to travel on frequent north, south, east and west crosstown lines, rather than by the antiquated "around the city hall" service.

This new network of crosstown lines is an absolute necessity at once, for there are now more people in Detroit living outside the lines of the Boulevard than there were inside them ten years ago.

96 This is the point we have kept in mind in planning this new system. How long are we going to try to clear both the above and below the Boulevard traffic past the site of the old town pump on the Campus?

We have got to move up the hub of Detroit's proverbial traffic wheel. To do this we have provided five big East and West crosstown lines.

In laying out these lines they have been grouped in three classes, A, B, C. A and B systems should be completed within two years and, if an affirmative vote is received from the electorate, work will be begun on Class A the day after election.

This class should be ready for car operation within a year and Class B shortly afterward. The service-at-once plan proposes securing 156 miles of our own tracks in the city with the opportunity for establishing our own service without consultation with any private companies. It means the addition of 550 new cars, or half as many as the D. U. R. now operates during the rush hour.

One mile of new track is provided for each 2,000 of the 200,000 factory workers who now fight their way to and from the great east and west side factory districts.

It is my firm belief that the inauguration of this Independent System will do more to relieve Detroit's housing difficulties, and especially the congested rooming and apartment house situation in the district between the Boulevard and the river, than any army of builders and contractors we could ever hope to mobilize. In fact, nothing but an improved transportation system of this kind will entirely relieve our present housing situation.

As the building of Class C system will necessarily be delayed for some time, we have not included the cost of these lines in our 97 figures, but have included only the cost of constructing and equipping the lines proposed in Classes A and B.

The Class A system provides the taking over of 34.25 miles of lines built under the so-called "day-to-day" agreement, in which the city has the right to purchase the lines at cost to the railway company, less depreciation, and which is estimated will be about \$40,000 per mile. Added to this, we propose to take over the so-called Fort Street line and the Woodward Avenue line to Milwaukee Avenue, which aggregates an additional 21.25 miles, which, it is safe to assume, the railway will be glad to deliver us in preference to getting off the street, at say, an estimated cost of \$40,000 per mile.

This aggregates a total of \$2,220,000 for lines already built. The additional new lines proposed in Classes A and B system aggregate 100.75 miles, at an estimated cost of construction of \$70,000 per mile, which totals \$7,052,500.

In addition to this, assume we purchase 400 cars equipped with motors at an estimated cost of \$10,000 per car, which would aggregate \$4,000,000 and 150 trailers at an estimated cost of \$5,000 per trailer, aggregating \$750,000, or a total of \$4,750,000 for cars and trailers to which we have added \$1,000,000 for car barns, tools and miscellaneous equipment.

This totals in the aggregate \$15,022,500.

I have been watching the development of the gas street car, and recently I had a conference with Mr. Henry Ford, at which time he showed me several engines and plans for the car. In discussing the details with his engineers, I was assured that the gas street car could be built for a maximum of \$5,000 per car, which would reduce the cost of car equipment 50 per cent, or in other words, cut the cost down to about \$2,000,000.

The adoption of this system of transportation will obviate the necessity of electrically equipping the lines, and of the building and equipping of power plants.

In proposing this \$15,000,000 public utility bond issue, we have been very liberal in our estimates of the probable cost of the completed street railway system which the plans cover.

In complying with the requirements of the charter, we have taken into consideration all of the items of expense with which the present company has to meet, and provided for interest charges on the \$15,000,000 at 4½ per cent, and to retire \$500,000 of the bonds per year, which would mean that all of the bonds would be retired in 30 years. It will be seen that as the principal is retired, the interest charges will be materially reduced. None of the interest charges or the fund for retiring the bonds will come out of the taxpayers, but will be taken out of fares collected from the car riders.

The plan which has been evolved, complies in every detail with the charter, commanding the officials to proceed with municipal ownership and operation. A study of the map will clearly indicate to you that the system is complete, without having any connection with the present company.

The several proposed crosstown lines will, in our opinion, greatly relieve the congested downtown district, and obviate the necessity of spending some \$8,500,000 for subway dips for some years.

I trust that your Honorable Body will give this ordinance your earnest consideration, so that, if adopted by you, there will be plenty of time for our citizens to inform themselves sufficiently on its details to be able to intelligently vote on the proposition at the special election provided to be called on April 5, 1920.

Respectfully submitted,

JAMES COUZENS,

Mayor.

Filed April 10, 1920. Elmer W. Voorheis, Clerk.

(Here follows document and map marked p. 100.)

101 UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity.

No. 329.

DETROIT UNITED RAILWAY, Plaintiff,

vs.

CITY OF DETROIT, a Municipal Corporation, et al., Defendants.

Motion to Dismiss.

And now come the City of Detroit, a municipal corporation, and James Couzens, its Mayor, Henry Seffens, Jr., its Controller, Ralph Wilkinson, William B. Mayo and Griffith O. Ellis, members of the Board of Street Railway Commissioners of said City of Detroit; and Charles F. Bielman, William E. Bradley, Fred W. Castator, John A. Kronk, Sherman Littlefield, John C. Lodge, John Nagel, David W. Simons and James Vernor, members of the Common Council of the City of Detroit, defendants in the above cause, and move the Court to dismiss the bill filed in this cause, for the following reasons:

(1) The facts contained in said bill of complaint are insufficient to constitute a valid cause of action in equity.

(2) No Federal question is presented in or by said bill of complaint.

(3) The bill of complaint herein does not involve the construction or application of any provision of the Constitution of the United States.

102 (4) The facts alleged in the bill do not constitute in law or in fact any threat by defendants, or any of them, of a confiscation of the property of the plaintiff or any part thereof; or of a deprivation of any of plaintiff's property without making just compensation therefor or of a taking of any of plaintiff's property without due process of law.

(5) The only averments of the said bill by which a federal question is sought to be presented are contained in the following enumerated paragraphs:

(a) Paragraph 13, page 27, in which the naked assertion is made:

"But the said Ordinance was by the said Mayor and -is subservient associates wickedly conceived and cunningly devised with the intention and for the purpose of trampling upon and setting at naught those ideas and dispensations of honesty, decency which it is now

and from the earliest ages has been the function of courts of justice to vindicate and of circumventing the high constitutional principles embodying those ideas and inceptions."

"It is the pernicious and mendacious purpose of the same Mayor, assisted by his said subservient associates and appointees at his behest and command to take the property of the plaintiff, that is the street railway tracks and overhead equipment now existing on the streets in said ordinance enumerated, for the use of the city and the people thereof, as such street railway tracks and equipment, without paying the plaintiff fair and reasonable compensation therefor."

(b) And later in said paragraph upon page 28 of said bill the following naked assertion:

"The claimed power of ordering said tracks and equipment to be removed from said streets is to be exercised only as a pretense, pretext and subterfuge for the accomplishing of the said iniquitous scheme of taking said property from the plaintiff for use as a street railway in its precise present condition and in the manner in which it is now used, without paying fair and reasonable compensation therefor."

(c) In paragraph 13, page 29, thereof, in which the naked assertion is made:

"That a municipal or political subdivision of a state is by the high and beneficent provisions of the constitution adopted by the people of the United States, constrained to deal honestly and fairly with all persons, and not to take the property of any of them without due process of law, that is, paying fair and reasonable compensation therefor."

And later in said paragraph and upon said page the naked assertion:

"That it is the duty of the court, and that the court by right ought, and in justice must, strike directly at the vicious and unconscionable purpose clearly apparent in this scheme for the taking of the property of plaintiff without fair and reasonable compensation therefor."

(d) The naked assertion contained in paragraph 14, page 35:

"That it is an essential part of the real proposition of acquisition that the City will, by the threat that it will make plaintiff cease operating and remove its tracks from the street, and by other illegal means, compel plaintiff to sell said tracks to the City for an inadequate price, and to thereby deprive plaintiff of its property without due process of law, in contravention of the due process clause of the 14th amendment of the constitution of the United States."

(e) The naked assertion contained in paragraph 16, pages 37 and 38, as follows:

"This in the circumstances stated in this bill is, plaintiff avers, a resort to illegal means to compel plaintiff to sell its property for an inadequate price, and to thereby deprive it of its property without due process of law in contravention of the due process of law clause of the 14th amendment of the Constitution of the United States.

Plaintiff further avers upon information and belief, that it is the intention of the said defendant, Couzens, acting as Mayor of the City of Detroit, and of the other defendants who are subservient to his will and who will conform to his will, to resort to other illegal means to compel plaintiff to assent to a sale of its said property for said inadequate value, and thereby deprive plaintiff of said property without due process of law, in contravention of the due process of law clause of the 14th amendment of the Constitution of the United States."

And later in said paragraph 16 as shown upon page 39 of the bill the naked assertion:

104 "It is the intention of said defendant Couzens, acting as Mayor of the City of Detroit and of the other defendants who are subservient to his will, and who will execute his will, to at once put in force said street railway proposition and upon the assumption, too, that this gives the City officials the authority to compel plaintiff to sell its trackage as aforesaid, without giving plaintiff or any other persons the opportunity of having adjudication as to the legality of the same and thereby deprive plaintiff of its property without due process of law in contravention of the due process clause of the 14th amendment of the Constitution of the United States."

That the said averments of the said bill in fact and in law present no federal question by which this court acquires any jurisdiction over the parties hereto or the subject matter herein involved and that the said averments are a mere subterfuge under color of which it is sought by the plaintiff to vest jurisdiction of the parties herein and the subject matter herein in this court.

(6) As to those streets upon which the bill alleges the City of Detroit threatens to order cessation of street railway service and removal of street railway tracks therefrom, the said City has the legal right to order such cessation and such removal; and the existence of such legal right negatives any claim that the execution of said right would invade the 14th amendment of the Constitution of the United States.

(7) Said bill does not state any matter of equity entitling plaintiff to the relief prayed for or of which this court may take judicial cognizance, nor are the facts as stated sufficient to entitle plaintiff to any relief against the defendants or any of them.

(8) That the ordinance and proposition voted upon on April 5, 1920, and referred to in said bill, invade no constitutional right or privilege of the plaintiff, and empowers no official of the said city either to violate any contractual right which the plaintiff may have

or to confiscate or impair any property or property right of the plaintiff.

105 Wherefore defendants pray the judgment of this Court whether they shall further answer and that they be dismissed with their costs.

CLARENCE E. WILCOX,
ALFRED LUCKING,
ALFRED J. MURPHY,
Attorneys for Defendants.

Filed April 30, 1920. Elmer W. Voorheis, Clerk, by Carrie Davison, Deputy Clerk.

106 In the District Court of the United States for the Eastern District of Michigan.

DETROIT UNITED RAILWAY, Plaintiff,

vs.

THE CITY OF DETROIT, Defendant.

Before Hon. Arthur J. Tuttle, District Judge.

Thursday, May 27th, 1920—10 a. m.

Appearances:

Messrs. Elliott G. Stevenson, William L. Carpenter and Hinton E. Spalding on behalf of the plaintiff.

Messrs. Clarence E. Wilcox, Corporation Counsel, Alfred J. Murphy and Alfred Lucking on behalf of the defendant.

Oral Opinion.

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TUTTLE, J.:

As I view it, the most difficult question that has been submitted to the Court is the one as to whether or not a Federal constitutional question is involved in the so-called D. U. R. suit. In the light of the recent decisions I reach the conclusion that it is my duty to take jurisdiction of that case, but I do so on the theory that the federal question is raised in good faith and not because when such question is properly answered the Bill shows any invasion of constitutional rights.

The other important questions of law discussed apply to both cases. A decision of the remaining questions will dispose of both cases.

In disposing of the different questions which have been raised here, I will briefly state the reasons for my conclusions. It is my duty to decide all of these questions of law on the assumption that all allegations of facts properly pleaded in the Bills are true. What are the rights of the Railway Company in the streets where the franchises have expired, I discover nothing in the allegations of

the Bill which change- the situation today in those streets from what it was when the Supreme Court of the United States decided the so-called Fort Street case and I hold that the rights are now as defined in that case.

108 The method of granting franchise rights to a transportation company by a municipality is so clearly defined that I can not reach the conclusion that street car companies can acquire rights in any other way. When the franchises so granted expire, the contractual relations cease and the rights of the street car company in the streets are at an end.

The recent decision by the United States Supreme Court in the case of the D. U. R. v. Detroit which went up from this court, as I understand it, simply means that if the city assumes to regulate they must regulate justly. In the light of this case and the so-called Fort Street case, I reach the following conclusions:

The contractual rights between the parties were terminated with the expiration of the franchise. The company at the expiration of their franchises had a reasonable time in which to remove their property from the streets. They have a right to terminate their service and remove their property if they desire to do so. The City, on the other hand, has a right to require them to remove, giving them a reasonable time for the removal. If at the expiration of these contractual rights, the City attempts to regulate, they must regulate in a reasonable manner and they cannot fix confiscatory rates.

It seems to me that this is as far as that case intended to go. My earnest desire is to follow it and follow it accurately and
109 exactly the way that the courts have interpreted the law, and this is my conclusion as to what that case means. I do not think that case says or intended to say that in a case like this, where the city has permitted the street car company to operate without arrangement or by a day-to-day arrangement in which they have expressly provided that their rights were not to be changed, that new and additional rights continuing into the future have been created which would affect the situation here presented to the Court. I do not think that the situation so far as removal from street is concerned is any different five years following the termination of the ordinance than it is the next day after the ordinance is terminated. I do not think there is a change here. I am not basing this conclusion on the decree in the Fort Street case but I am basing it on the law as laid down by the Supreme Court of the United States in the opinion of the Fort Street case, and the recent decision by the Supreme Court in the D. U. R. case from this court. I hold that the situation has not changed and that the same reasoning that was controlling then is controlling today on Fort Street or any other street where franchises have terminated and no new franchises have been granted. This street car company and city and every other municipality and public service corporation would find themselves in a confusing plight if the law was otherwise. The situation here will frequently happen.

At the expiration of franchises they are frequently going
110 to be unable to agree on the terms of a new franchise, and
yet both parties are going to desire to have the cars continue
in operation for a time at least.

Now, if under those circumstances the courts are going to say
there is an implied agreement or an estoppel which changes the rights
of the parties more wrongs than equities will result. I find nothing
in the statutes or in the decisions of courts to indicate that under
such circumstances continuing rights are going to be acquired and
the determination of those rights is to be a judicial question. Suppose
I had heard the proofs in this case, had found all the facts to
be as alleged in the Bill of Complaint, and was now attempting to
define the rights of this public service corporation in the streets of
Detroit, and to say when those rights would be terminated, it
would be impossible to perform that task unless we say there are no
contractual relations in a case of this kind except they be made
according to law. I hold that the city has power to remove the
company from the streets in question.

Now, the question about the ordinance and the submission of it
to the people and the vote upon it: It is very plain and every one
is agreed that this ordinance gave no right to the city to buy any
property from the D. U. R. or to lease any property from the D. U.
R. or to condemn any property belonging to the D. U. R., and that
this city cannot do so without submitting a definite proposition to
the people of this city and receiving a three-fifths favorable vote
thereon. There is no question about that.

111 The charter of the City of Detroit has been adopted by a
proper vote of the people of this city, and it provides that
the city has the power to acquire municipally owned street car com-
panies, but it expressly says that it cannot acquire by purchase, lease
or condemnation, without submitting it to the people in the manner
which I have already mentioned. Not only by the limitations of the
charter, but by the limitations expressly mentioned in this ordinance,
we reach the conclusion that there are no rights at the present time
in the city to purchase, condemn or lease the property of the De-
troit United Railway, and that they can only obtain those rights by
submitting a definite contract, lease or scheme for condemnation to
the people and getting a three-fifths favorable vote upon it. There
is only one course for acquisition open at the present time for the
city under existing ordinances and that is to acquire by construction.

It is urged that the vote-s were deceived through oral written state-
ments of public officials of this city into a misunderstanding of this
ordinance. It was correctly published according to law. I hold that
those acts complained of were unofficial acts and that they have no
more bearing upon this legal proposition than they would if said
by some private citizen or one of the papers in this city.

112 I hold that this court cannot inquire into the things that
influenced the voters, and as far as I can go in that direction,
and the only inquiry I can make in that direction is to in-
quire whether or not the ballot on which this question was submitted
was a proper ballot. As to the things done in the campaign by

private individuals or public individuals, that is outside of the scope of proper investigation of this court.

The form of the ballot and whether the question was submitted by a proper ballot and in a proper manner to the voters is a judicial question. It is not necessary under the law that the entire ordinance be on the ballot, but that it be fairly described and identified with the ordinance which has been published, in such a way that the public may know what it is they are voting on, and I hold that this ballot does properly submit that question to the voters of this city and did so submit it.

The remaining question is raised by the claim that the ordinance in question was a part of a scheme to defraud the Detroit United Railway out of its property or to get its property at a confiscatory and unfair price. It seems to me that taking the plaintiff's bill at its fullest force in favor of the plaintiff, that the question must be decided adversely to the plaintiff, and in favor of the defendant.

I do not take it that the Bill charges that the three-fifths of the voters of Detroit who voted in favor of this ordinance (the judge of this court is not one of the number) are in a scheme to defraud

113 the Detroit United Railway out of its property, but the claim is that certain public officials have got a scheme of this kind. In addition to what I have already said about the inability of a court to inquire into the motives of electors and legislators in the casting of their votes, it seems to me a complete answer to the claim that it is a scheme to buy this property for less than it is worth and in a manner that violates the constitution; that this city under existing circumstances cannot buy this property. The only way they can do it is if this railway company enters into a contract to sell the property and then the contract is approved by a three-fifths vote of the people. The thing the court is asked to protect against cannot be done unless the Detroit United Railway itself and three-fifths of the vote of this city agree to it. That is something that the Mayor of this City cannot put across nor the Common Council of this City put across.

It seems to me that the injunction asked is far beyond anything that ever has been done by any court or ever ought to be done.

I believe that I have disposed of the principal questions involved and that they are controlling in both of these cases. A decree will be entered dismissing both Bills.

Mr. Stevenson: What bond will your Honor require on the appeal?

The Court: I think \$250. is sufficient. I will reserve a right, if I have the time to put what I have roughly said into the form of a memorandum opinion. To do that will not *de* depriving
114 any one of any of their rights.

Mr. Murphy: We consent to that, your Honor, and express it on the record.

Filed Aug. 3, 1920. Elmer W. Voorheis, Clerk, by Carrie Davison, Deputy Clerk.

115

Order Dismissing Bill.

At a Session of the District Court of the United States for the Eastern District of Michigan Continued and Held, Pursuant to Adjournment, at the District Court Room in the City of Detroit, in said District, on Thursday, the Twenty-seventh day of May, in the year of our Lord one thousand Nine Hundred and Twenty.

Present: The Honorable Arthur J. Tuttle, United States District Judge.

No. 329.

DETROIT UNITED RAILWAY, Plaintiff,

VS.

CITY OF DETROIT et al., Defendants.

In this cause defendants' motion to dismiss bill of complaint, coming on for hearing, on this day, is argued by counsel for respective parties, and the court being fully advised in the premises, does now here order, adjudge and decree that the bill of complaint herein be, and the same is hereby dismissed without costs.

116 In the District Court of the United States, Eastern District of Michigan, Southern Division, in Equity.

DETROIT UNITED RAILWAY, Plaintiff,

VS.

CITY OF DETROIT et al., Defendants.

Motion for Rehearing and Motion to Amend.

Now comes the said plaintiff, by Stevenson, Carpenter & Butzel, its attorneys and moves the court for a rehearing of the motion to dismiss the bill of complaint herein made by the defendants, for the reason that the court in holding in the decision of said motion that the action of the officials of the city of Detroit in preparing and distributing the document, of which a copy is attached to the bill of complaint as Exhibit 6, described in the 2nd paragraph of the 12th section of the bill of complaint herein, was not official action, misapprehended the facts regarding the preparation and distribution of said document, and erred in holding that said action did not affect the validity of the submission of the street railway proposition submitted to the electors of said city of Detroit at the election of April 5, 1920, or the validity of the election held thereon; and moves the court also for an order authorizing said plaintiff to amend its bill of complaint by inserting therein at the end of the 3rd paragraph of the 12th section thereof, and immediately after

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the words, "at addresses taken from the previous registration list" the following paragraph:

"That exhibit 7, hereto attached, is a true copy of the official proceedings of the representative officials of the City of Detroit, relating to the preparation and distribution of the document, a copy of which is attached to the bill of complaint as Exhibit 6, purporting to be a statement of the street railway plan to be voted on at the election of April 5, 1920, containing the proposition to be voted on at said election, together with certain explanatory matter as set forth in the second paragraph of section 12 of said bill of complaint."

and by appending to the said bill of complaint, as Exhibit 7, the extracts from the printed report of the proceedings of the common council of the city of Detroit contained in the affidavit of Hinton E. Spalding herewith filed.

This motion is based upon the records and files in this cause, upon the opinion of the court delivered at the conclusion of the argument of the said motion to dismiss directing a dismissal of the bill of complaint, and upon the affidavit of Hinton E. Spalding herewith filed.

STEVENSON, CARPENTER & BUTZEL,

Plaintiff's Attorneys.

118 In the District Court of the United States, Eastern District of Michigan, Southern Division, in Equity.

DETROIT UNITED RAILWAY, Plaintiff,

VS.

CITY OF DETROIT et al., Defendants.

EASTERN DISTRICT OF MICHIGAN,

County of Wayne, ss:

On this 29th day of May, A. D. 1920 before the undersigned, a Notary Public in and for said county, personally appeared Hinton E. Spalding who, being duly sworn, says:

That he is one of the counsel for plaintiff in the above entitled cause, and makes this affidavit on its behalf.

That on the 3rd day of February 1920 the Board of Street Railway Commissioners of the City of Detroit submitted to the Common Council of said city, which is the legislative body thereof, the following communication:

"To the Honorable the Common Council:

GENTLEMEN:

Since your Honorable Body passed the street railway development ordinance last Tuesday, many requests have been made upon us for copies of the ordinance and maps showing the routes that the new lines propose to take.

It has been thought best to get out practically a sample ballot with a map on the back thereof, showing the proposed routes.

The City Clerk obtained estimates of the cost of printing the ballots, addressing, mailing, etc., of some 300,000 ballots and, at that time, it was estimated it would cost \$10,500.00.

119 "In that considerable time has elapsed since the last registration, it is the opinion of this board that the mailing of the ballots would result in a considerable waste, because of the inaccuracies of the addresses and the changes that have taken place since the last registration. We, therefore, believe that some method other than that of mailing to the registered list would be more desirable.

"We request your Honorable Body to approve of the getting out of 300,000 such sample ballots and maps, and request authority to take the funds out of Item 501, Clerical Service and Expense, as there is left in that fund \$24,511.12.

"If this permission is granted, we will submit bids for the work to your Honorable Body for approval at a later date.

Respectfully submitted,

GRIFFITH OGDEN ELLIS,

W. B. MAYO,

Board of Street Railway Commissioners."

That thereupon, and upon the same date, the following resolution was adopted by said Common Council:

"By Councilman Nagel:

Resolved, That the Controller be and he is hereby authorized and directed to take from Item 501, 'Clerical Services and Expenses,' Street Railway Fund, the sum of \$10,500, and place same to the credit of the Board of Street Railway Commissioners, for the purpose of defraying cost of printing and distributing approximately 300,000 sample street railway proposition ballots with maps on back of same; and further

Resolved, That the Department of Purchases and Supplies be and is hereby authorized to advertise for bids for printing said sample ballots, and submit same to this body for approval.

Adopted as follows:

Yeas—Councilmen Bradley, Kronk, Littlefield, Nagel, Simons, Vernor and the President—7.

Nays—None."

all of which appears by the printed report of the proceedings of said Common Council for the Session of February 3, 1920, and on pages 135-136 of said printed proceedings.

That thereafter the Department of Purchases and Supplies of said City of Detroit, which by the Charter of said City is charged with the duty of advertising for bids for the furnishing of all
120 supplies, materials and equipment for the city, and for all departments, offices, boards and commissions thereof, where the amount of the proposed purchase is over five hundred

dollars, advertised for bids pursuant to the terms of said resolution, and thereafter, and on February 24, 1920, made the following report to the Common Council of the City of Detroit:

"To the Honorable the Common Council:

Gentlemen: In pursuance of your resolution of February 4, 1920, authorizing me to advertise for bids for the printing of the Street Railway Proposition, I caused notice to appear by advertising in the Detroit Legal News under date of February 6, and the following bids were submitted on February 13, 1920:

Federal Lithograph Company, Detroit, Michigan.....	\$4,275.00
Topping-Saunders Company, Detroit, Michigan.....	\$4,434.00
Stafford Printing Company, Detroit, Michigan.....	\$4,395.00
Gregory Mayer & Thom, Detroit, Michigan.....	\$5,050.00

The lowest bid was that of the Stafford Printing Company, taking into consideration the fact that their proposal contemplated the folding and clipping of each copy of 'Municipal Street Railway Proposition,' and the writer therefore recommends awarding of contract to said firm. This contract to include the printing of ordinance, a map of the proposed street car lines, with a brief statement of the estimated cost.

Printing to be in two (2) colors and in accordance with specification, etc., colors to be black and red, and it is to be made in accordance with proposal for the sum of \$4,395.00.

Respectfully yours,

JOSEPH A. MARTIN,

Commissioner."

That thereupon, and at a session held upon February 24, 1920 the said Common Council adopted the following resolution:

"Resolved, That the contract entered into by the Department of Purchases and Supplies with Stafford Printing Company for printing, folding and clipping copies of Municipal Street Railway Proposition, for the sum of \$4,395. be and the same is hereby approved and confirmed.

Adopted as follows:

Yeas—Councilmen Bielman, Bradley, Kronk, Littlefield, Nagel, Vernor and the President—7.

Nays—None."

121 all of which appears by the printed report of the proceedings of said Common Council of February 24, 1920, at page 237 of said proceedings.

(Sgd.)

HINTON E. SPALDING.

Subscribed and sworn to before me this 28th day of May, A. D. 1920.

(Sgd.)

CHARLES B. MARKS,

Notary Public, Wayne Co. Michigan.

My commission expires July 6, 1920.

Filed May 29, 1920. Elmer W. Voorheis, Clerk, by Carrie Division, Deputy-Clerk.

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Order Denying Motion to Amend, etc.

District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity.

DETROIT UNITED RAILWAY, Plaintiff,

VS.

CITY OF DETROIT et al., Defendants.

At a Session of said Court Held at the Courtroom in the City of Detroit on the 8th Day of June, 1920.

Present: Hon. Arthur J. Tuttle, District Judge.

The motion heretofore made by the plaintiff for leave to amend its bill of complaint and for a rehearing of defendant's motion to dismiss said bill of complaint came on to be heard and after hearing counsel for the respective parties,

The court having offered to grant leave to amend said bill as proposed by the plaintiff conditionally, however, upon plaintiff's further amending its said bill as proposed by the defendants by appending thereto as exhibits copies of the resolutions of the Common Council of Detroit, described in general language in Section 5 of said bill, and the plaintiff having declined to accept said condition,

Ordered that said motion for leave to amend said bill and for a rehearing of said motion to dismiss be, and the same hereby is, denied.

ARTHUR J. TUTTLE,
District Judge.

Filed June 8th, 1920. Elmer W. Voorheis, Clerk.

Decree Dismissing Bill.

In the District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity.

No. 329.

DETROIT UNITED RAILWAY, Plaintiff,

VS.

CITY OF DETROIT et al., Defendants.

At a Session of said Court Continued and Held at the District Court Room of the United States for the Eastern District of Michigan, Southern Division, in the Federal Building in the City of Detroit, State of Michigan, within said District, on July 9, 1920.

Present: Honorable Arthur J. Tuttle, District Judge.

Defendants' motion to dismiss plaintiff's Bill of Complaint filed hereing having come on to be heard before said Court, and having been argued by Alfred J. Murphy on behalf of said defendants and by Elliott G. Stevenson on behalf of the plaintiff, the Court after due consideration thereof adjudges and decrees;

1. That giving to the Bill of Complaint its utmost probative value and according it entire good faith a question is presented involving the application of the fourteenth amendment to the constitution of the United States.

2. That the plaintiff railway company has no contract rights, privileges or franchises upon the following named streets, of the City of Detroit, to wit: On West Jefferson Avenue, from Artillery Avenue to Clark Street; on Clark Street from West Jefferson Avenue to Fort Street, West, on West Fort Street from Artillery Avenue to and across Woodward Avenue to Cadillac Square; on the southerly
124 part of Cadillac Square from Woodward Avenue to Randolph Street; on the northerly part of Cadillac Square from Woodward Avenue to Bates Street, on Bates Street from Cadillac Square to Randolph Street, on Randolph Street from Cadillac Square to Monroe Avenue; on Monroe Avenue from Randolph Street to Elmwood Avenue; on Elmwood Avenue from Monroe Avenue to Lafayette Avenue, East; on Lafayette Avenue East from Elmwood Avenue to Baldwin Avenue, on Helen Avenue from Jefferson Avenue East to Lafayette Avenue East; on Lafayette Avenue East from Elmwood Avenue to Randolph Street, said streets being traversed by the so-called Fort Street Lines, or under the bill of complaint herein on Woodward Avenue north from the Detroit River to the point of its intersection with Milwaukee Avenue, said street being traversed by the so-called Woodward Avenue lines. That whatever contract

rights, privileges and franchises said plaintiff company may have had in the above described streets have expired and the defendant City may require said company to cease its service upon such streets, other than on Woodward Avenue north of the Detroit River to the point of intersection with Milwaukee Avenue, and remove its property therefrom upon giving the notice and time for removal, as required under the terms of the decree entered in the case of City of Detroit vs. Detroit United Railway, pursuant to the opinion found in 172 Michigan, page 136. That the said company has acquired no rights in the said streets since the expiration of said franchises by reason of the facts alleged in plaintiff's bill of complaint as such rights can only be acquired by express grant from the defendant City according to the requirements of the statutes and constitution of Michigan.

3. That the proposition adopted and ratified by the electorate of the defendant City on April 5, 1920, does not empower said City to purchase, lease or condemn any specific property of the plaintiff company unless the specific contract to purchase or lease or plan to condemn be approved by three-fifths of the electors voting thereon, pursuant to the provisions of Section 8, Chapter 13, Title 4, of the Charter of the City of Detroit.

4. That the acts of the defendant Mayor, common council and board of street railway commissioners alleged in the bill to have deceived the voters into a misunderstanding of the ordinance of February 27, 1920, and the proposition thereunder submitted on April 5, 1920, have no legal bearing upon the validity of the election or the adoption of said proposition.

5. That the motives of electors in casting their votes at the municipal election of April 5, 1920, are not open to judicial investigation and injury.

6. That the ballot used at the municipal election of April 5th, 1920 was legally sufficient in form to describe and identify the proposition submitted and did properly submit the proposition embraced within the ordinance.

7. That neither the ordinance of February 27, 1920 nor the election of April 5, 1920 on said municipal railway proposition was a scheme on the part of any or all of the defendants to defraud the plaintiff of its property without due process of law; nor did said ordinance or said election constitute any breach, violation or invasion of any contract right of the plaintiff.

Now, therefore, in consideration thereof, it is

Ordered, adjudged and decreed that the plaintiff's Bill of Complaint be and the same is hereby dismissed for lack of equity with costs to the defendant to be taxed.

(Sgd.)

ARTHUR J. TUTTLE,
District Judge.

126

Claim of Appeal and Allowance.

In the District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity.

No. 329.

DETROIT UNITED RAILWAY, Plaintiff,

vs.

CITY OF DETROIT, JAMES COUZENS, Mayor of the City of Detroit; Henry Steffens, Jr., Controller of the City of Detroit; Ralph Wilkinson, William B. Mayo and Griffith O. Ellis, Members of the Board of Street Railway Commissioners of the City of Detroit; Charles F. Bielman, William E. Bradley, Fred W. Castator, John A. Kronk, Sherman Littlefield, John C. Lodge, John C. Nagel, David W. Simons and James W. Vernor, Members of the Common Council of the City of Detroit, Defendants.

Plaintiff in the above entitled cause, conceiving itself aggrieved by the final decree dismissing its Bill of Complaint entered on the 9th day of July, 1920, in the above entitled cause, for the reasons stated in its assignments of error presented herewith, does hereby appeal from said decree to the Supreme Court of the United States and it prays that this, its appeal, be allowed, and that the transcript of the record, together with the assignments of error and the proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 13th day of July, in the year of our Lord nineteen hundred and twenty.

STEVENSON, CARPENTER &
BUTZEL,

Attorneys for Plaintiff and Appellant.

DONNELLY, HALLY,
LYSTER & MUNRO, AND
H. E. SPAULDING,
Of Counsel.

127 And now, to-wit, on this 13th day of July, in the year of our Lord nineteen hundred and twenty, it is ordered that the appeal in the above entitled cause be allowed as prayed for.

(Sgd.)

ARTHUR J. TUTTLE,

District Judge.

Filed July 13th, 1920. Elmer W. Voorheis, Clerk, Lew W. Levinson, Deputy Clerk.

128 In the District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity.

No. 329.

DETROIT UNITED RAILWAY, Plaintiff & Appellant,

VS.

CITY OF DETROIT, JAMES COUZENS, Mayor of the City of Detroit; Henry Steffens, Jr., Controller of the City of Detroit; Ralph Wilkinson, William B. Mayo and Griffith O. Ellis, Members of the Board of Street Railway Commissioners of the City of Detroit; Charles F. Bielman, William E. Bradley, Fred W. Castator, John A. Kronk, Sherman Littlefield, John C. Lodge, John C. Nagel, David W. Simons and James W. Vernor, Members of the Common Council of said City of Detroit, Defendants and Appellees.

Assignments of Error.

And now comes the above named plaintiff and appellant, Detroit United Railway, by Stevenson, Carpenter & Butzel, its attorneys, and files with its petition for appeal the following assignments of error. It says that the District Court in rendering the final decree in the above entitled cause erred in the following particulars:

1. In granting defendants' motion to dismiss plaintiff's Bill of Complaint and in entering a decree dismissing the same upon the ground that it presented no cause for equitable relief.
2. In holding, as stated in paragraph 2 of said Decree:

"That the plaintiff railway company has no contract rights, privileges or franchises upon the following named streets of the City of Detroit, to-wit: On West Jefferson Avenue, from Artillery Avenue to Clark Street; on Clark Street from West Jefferson Avenue to Fort Street, West, on West Fort Street from Artillery Avenue to and across Woodward Avenue to Cadillac Square; on the southerly part of Cadillac Square from Woodward Avenue to Randolph Street; on the northerly part of Cadillac Square from Woodward Avenue to Bates Street, on Bates Street from Cadillac Square to Randolph Street, on Randolph Street from Cadillac Square to Monroe Avenue; on Monroe Avenue from Randolph Street to Elmwood Avenue; on Elmwood Avenue from Monroe Avenue to Lafayette Avenue East; on Lafayette Avenue East from Elmwood Avenue to Baldwin Avenue, on Helen Avenue from Jefferson Avenue East to Lafayette Avenue East; on Lafayette Avenue East from Elmwood Avenue to Randolph Street, said streets being traversed by the so-called Fort Street Lines, or under the bill of complaint herein on Woodward Avenue north from the Detroit River to the point of its intersection with Milwaukee Avenue, said street being traversed by the so-called

Woodward Avenue lines. That whatever contract rights, privileges and franchises said plaintiff company may have had in the above described streets have expired, and the defendant City may require said company to cease its service upon such streets, other than on Woodward Avenue north of the Detroit River to the point of intersection with Milwaukee Avenue, and remove its property therefrom upon giving the notice and time for removal, as required under the terms of the decree entered in the case of City of Detroit vs. Detroit United Railway, pursuant to the opinion found in 172 Michigan, page 136. That the said company has acquired no rights in the said streets since the expiration of said franchises by reason of the facts alleged in plaintiff's bill of complaint as such rights can only be acquired by express grant from the defendant city according to the requirements of the statutes and constitution of Michigan.

3. In inserting in the Decree dismissing plaintiff's Bill of Complaint, the following provision whereby defendant city is given affirmative relief, namely:

130 "And the defendant City may require said Company to cease its service upon such streets, other than Woodward Avenue north of the Detroit River to the point of intersection with Milwaukee Avenue, and remove its property therefrom upon giving the notice and time for removal, as required under the terms of the decree entered in the case of City of Detroit vs. Detroit United Railway, pursuant to the opinion found in 172 Michigan, page 136."

4. In holding, as stated in paragraph 4 of said Decree:

"That the acts of the defendant Mayor, common council and board of street railway commissioners alleged in the bill to have deceived the voters into a misunderstanding of the ordinance of February 27th, 1920, and the proposition thereunder submitted on April 5, 1920, have no legal bearing upon the validity of the election or the adoption of said proposition."

5. In holding, as stated in paragraph 5 of said Decree:

"That the motives of electors in casting their votes at the municipal election of April 5, 1920, are not open to judicial investigation and inquiry."

6. In holding, as stated in paragraph 6 of said Decree:

"That the ballot used at the municipal election of April 5th, 1920, was legally sufficient in form to describe and identify the proposition submitted and did properly submit the proposition embraced within the ordinance."

7. In holding, as stated in paragraph 7, of said Decree:

"That neither the ordinance of February 27, 1920, nor the election of April 5, 1920, on said municipal railway proposition was a scheme on the part of any or all of the defendants to defraud the plaintiff of its property without due process of law, nor did said or-

dinance or said election, constitute any breach, violation or invasion of any contract right of the plaintiff.

131 8. In holding that the facts alleged in the Bill of Complaint did not show that any property right of the plaintiff had been or will be by reason of anything in said Bill set forth, taken or impaired without due process of law, within the meaning of the Fourteenth Amendment of the Constitution of the United States.

9. In holding that the proposition relative to the acquisition by the City of Detroit of a municipal street railway system was validly submitted to the electors of said city at the election held on April 5th, 1920, and that the vote thereon gave valid authority to construct street railway lines and maintain and operate municipal street railways upon the streets in said proposition described.

10. In holding that in determining the effect of the affirmative vote of the electors of the City of Detroit on the street railway proposition submitted to them at the election held April 5th, 1920, no consideration whatsoever should or will be given to the statements in the Mayor's message (Exhibit 5) attached to plaintiff's bill of complaint.

11. In holding that in determining the effect of the affirmative vote of the electors of the City of Detroit on the street railway proposition submitted to them at the election held April 5th, 1920, no consideration should or will be given to the fact that defendants, as averred in said Bill, prepared and distributed to said electors before election, the sample ballot, Exhibit 6, attached to plaintiff's Bill of Complaint, with the explanation thereon of said proposition to be submitted at said election.

12. In failing to consider the fact that the amount of 131½ bonds provided for in the proposition relative to the acquisition by the City of Detroit, of a municipal street railway system, submitted to the electors of said City at the election of April 5th, 1920, was much less than the amount necessary for the acquisition of the street railway lines provided for in said proposition, and that the statement in said proposition, would lead the voters to suppose that said amount was adequate to acquire said street railway lines; and in failing to hold that the submission of said proposition was therefore invalid.

13. In refusing to allow plaintiff to amend its Bill of Complaint as proposed by said motion to amend said Bill, except upon the condition that it would further amend its said Bill as proposed by the defendants, and in denying plaintiff's motion for a re-hearing of defendant's motion to dismiss after the plaintiff had declined to accept said condition.

Wherefore appellant prays that the decree of the District Court of the United States for the Eastern District of Michigan, Southern

Division in Equity, entered in the above entitled cause may be reversed.

STEVENSON, CARPENTER & BUTZEL,
Attorneys for Plaintiff & Appellant.

DONNELLY, HALLY, LYSTER & MUNRO,
H. E. SPALDING,
Of Counsel.

Filed July 13th, 1920. Elmer W. Voorheis, Clerk, By Lew W. Levinson, Deputy Clerk.

132

Citation.

UNITED STATES OF AMERICA, *ss:*

To The City of Detroit, a Municipal Corporation; James Couzens, Mayor of the City of Detroit; Henry Steffens, Jr., Controller of the City of Detroit; Ralph Wilkinson, William B. Mayo and Griffith O. Ellis, Members of the Board of Street Railway Commissioners of the City of Detroit; Charles F. Bielman, William E. Bradley, Fred W. Castator, John A. Kronk, Sherman Littlefield, John C. Lodge, John Nagel, David W. Simons and James Vernor, Members of the Common Council of the City of Detroit, Greeting:

You are hereby cited and admonished to appear at a session of the Supreme Court of the United States at Washington, on the 24th day of August, next, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, wherein the Detroit United Railway, a Michigan Corporation, is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 13th day of July, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States of America the one hundred and Forty-four.

ARTHUR J. TUTTLE,
District Judge.

Service accepted July 14th, 1920.

CLARENCE E. WILCOX,
Corporation Counsel.

133

Bond on Appeal.

In the District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity.

No. 329.

DETROIT UNITED RAILWAY, Plaintiff,

VS.

CITY OF DETROIT, JAMES COUZENS, Mayor of the City of Detroit; Henry Steffens, Jr., Controller of the City of Detroit; Ralph Wilkinson, William B. Mayo and Griffith O. Ellis, Members of the Board of Street Railway Commissioners of the City of Detroit; Charles F. Bielman, William E. Bradley, Fred W. Castator, John A. Krone, Sherman Littlefield, John C. Lodge, John Nagel, David W. Simons and James Vernor, Members of the Common Council of the City of Detroit, Defendants.

Know all men by these presents, that we, the Detroit United Railway, a corporation as principal, and William L. Carpenter and Elliott G. Stevenson, of Detroit, as sureties, are held and firmly bound unto the City of Detroit, a municipal corporation, James Couzens, Mayor of the City of Detroit, Henry Steffens, Jr., Controller of the City of Detroit, Ralph Wilkinson, William B. Mayo and Griffith O. Ellis, members of the Board of Street Railway Commissioners of the City of Detroit, Charles F. Bielman, William E. Bradley, Fred W. Castator, John A. Kronk, Sherman Littlefield, John C. Lodge, John Nagel, David W. Simons and James Vernor, members of the Common Council of the City of Detroit, in the penal sum of Two hundred and fifty dollars (\$250.00), lawful

134 Money of the United States, to be paid to the said City of Detroit, a municipal corporation, James Couzens, Mayor of the City of Detroit, Henry Steffens, Jr., Controller of the City of Detroit, Ralph Wilkinson, William B. Mayo and Griffith O. Ellis, members of the Board of Street Railway Commissioners of the City of Detroit, Charles F. Bielman, William E. Bradley, Fred W. Castator, John A. Kronk, Sherman Littlefield, John C. Lodge, John Nagel, David W. Simons and James Vernor, members of the Common Council of the City of Detroit, and for the payment of which we bind ourselves and each of us, and each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 13 day of July, A. D. 1920.

Whereas, the above named Detroit United Railway, has prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled cause by the Judge of the District Court of the United States for the Eastern District of Michigan, Southern Division.

Now, therefore, the condition of this obligation is such that if the

above bounden, the Detroit United Railway, shall prosecute said appeal to effect and answer for all damages and costs that may be adjudged against it if it fails to make said appeal good and effective, then this obligation shall be void, otherwise to be and remain in full force and effect.

DETROIT UNITED RAILWAY,
By A. E. PETERS,
Secretary,
WILLIAM L. CARPENTER,
ELLIOTT G. STEVENSON.

And now, to wit, on this 13th day of July, A. D. 1920, it is ordered that the form and penalty of the foregoing bond and the
135. sufficiency of the sureties be and the same is hereby approved, and that all proceedings on the decree in said cause are hereby stayed.

ARTHUR J. TUTTLE,
District Judge.

Filed July 13th, 1920. Elmer W. Voorheis, Clerk, by Lew W. Levinson, Deputy Clerk.

136

Docket Entries.

United States District Court.

Docket No. 329.

Title of Case,

THE DETROIT UNITED RAILWAY, a Michigan Corporation, Plaintiff,
vs.

THE CITY OF DETROIT, a Municipal Corporation; JAMES COUZENS, the Mayor of said City; Henry Steffens, Jr., the Controller of said City; and Ralph Wilkinson, William B. Mayo and Griffith O. Ellis, Members of the Board of Street Railway Commissioners of said City of Detroit; and Charles F. Bielman, William E. Bradley, Fred W. Castator, John A. Kronk, Sherman Littlefield, John C. Lodge, John C. Nagel, David W. Simons and James Vernor, Members of the Common Council of said City.

Attorneys.

Stevenson, Carpenter, Butzel & Backus; Donnelly, Hally, Lyster & Munro, and H. E. Spalding, of Counsel, Detroit, Michigan.
Clarence E. Wilcox, Corporation Counsel, Alfred Lucking and Alfred J. Murphy, Detroit, Michigan, for Defendants.

Filings—Proceedings.

Month.	Day.	Year.	
April	10,	1920.	Bill of Complaint filed.
"	"	"	Chancery Subpoena issued.
"	16	"	Chancery Subpoena returned served, filed and entered.
"	30	"	Motion to dismiss filed and entered.
"	"	"	Notice of hearing Motion to dismiss filed.
May	10	"	Order Granting leave to file Briefs on Motion to Dismiss on or before May 22/20 and fixing hearing for May 27, 1920.
"	27	"	Decree Dismissing Bill of Complaint entered.
"	29	"	Motion for re-hearing and for leave to amend filed and entered.
"	"	"	Order granting motion to amend conditionally, entered.
June	2	"	Proof of service of Motion for Re-hearing, etc. filed.
"	8	"	Order Denying Motion to Amend, etc., filed and entered.
July	2	"	Notice of Settlement of Decree for Friday, July 9, 1920, filed.
"	9	"	Decree Dismissing Bill of Complaint filed and entered.
"	13	"	Claim of Appeal and Allowance of Appeal filed, Order entered.
"	"	"	Assignment of Errors filed.
"	"	"	Bond on Appeal in \$250 William L. Carpenter & Elliott G. Stevenson, Sureties.
"	"	"	Citation issued, Returnable August 24, 1920.
July	15	1920.	Acceptance of service of citation filed.
Aug.	3	"	Præcipe for Record on Appeal filed.
"	"	"	Oral Opinion filed.

137

Præcipe for Record.

In the District Court of the United States for the Eastern District of Michigan, Southern Division.

No. 329.

DETROIT UNITED RAILWAY, Plaintiff,

VS.

CITY OF DETROIT et al., Defendants.

The Clerk of this Court is hereby directed to prepare and certify a transcript of the record in the above entitled case for the use of

the Supreme Court of the United States, by including therein the following:

1. Bill of Complaint.
2. Motion to Dismiss.
3. Motion for Re-hearing and Motion to Amend.
4. Order Denying Motion for Re-hearing and Motion to Amend.
5. Decree.
6. Claim of Appeal and allowance.
7. Assignments of Error.
8. Citation.
9. Bond on Appeal.
10. Copy of Journal Entries.
11. Opinion of Court.

Dated, this 3rd day of August, 1920.

STEVENSON, CARPENTER &
BUTZEL,

Attorneys for Appellant and Plaintiff in Error.

Filed August 3, 1920. Elmer W. Voorheis, Clerk, by Carrie Davison, Deputy-Clerk.

138 UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity.

THE DETROIT UNITED RAILWAY, Plaintiff,

VS.

CITY OF DETROIT et al., Defendants.

EASTERN DISTRICT OF MICHIGAN,
Southern Division, ss:

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify and return to the claim of appeal of The Detroit United Railway, plaintiff in the above entitled cause; that it is a true copy of the records and proceedings as designated to be included in the return to claim of appeal to be made by the Clerk of the Court, as the same appear of record and on file in my office; that I have compared the same with the originals, and it is a true and correct transcript of the whole and of every part of the record as designated.

In Testimony Whereof I have hereunto set my hand and affixed

the seal of said court, at Detroit, in said District, this 10th day of August, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States of America the one hundred and fortieth.

[Seal of the U. S. District Court, Eastern District of Mich.]

ELMER W. VOORHEIS,
*Clerk United States District Court,
Eastern District of Michigan.*

139 UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity.

No. 329.

DETROIT UNITED RAILWAY, Plaintiff,

VS.

CITY OF DETROIT, a Municipal Corporation; JAMES COUZENS, Mayor of the City of Detroit; Henry Steffens, Jr., Controller; Ralph Wilkinson, William B. Mayo and Griffith O. Ellis, Members of the Board of Street Railway Commissioners; Charles F. Bielman, William E. Bradley, Fred W. Castator, John A. Kronk, Sherman Littlefield, John C. Lodge, John Nagel, David W. Simons, and James Vernor, Members of the Common Council of the City of Detroit, Defendants.

Whereas by an order of this Court under date of August 14th, 1920, an order was made providing that additional portions of the record be included in the return to the Supreme Court for the purpose of appeal, and whereas the Clerk of the Court prematurely returned the return on appeal under date of August 10th, 1920 which was prior to the time for the sending of the return,

It is hereby stipulated by and between the above named parties by and through their respective counsel that a supplemental return shall and may be made by the Clerk of the Court and filed with the Clerk of the Supreme Court of the United States in this matter as provided in said order of August 14th, 1920.

STEVENSON, CARPENTER & BUTZEL,
ELLIOTT G. STEVENSON.

Attorneys for Plaintiff in Error and Appellant.

CLARENCE E. WILCOX,

Attorney for Defendant in Error and Appellees.

Filed September 4th, 1920. Elmer W. Voorheis, Clerk.

140 UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of Stipulation as to supplemental return on appeal, in the therein entitled cause as the same appears on file and of record in my office; that I have compared the same with the original, and it is a true and correct transcript therefrom and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said district, this Fourth day of September, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States of America the one hundred and forty-fifth.

[Seal of the U. S. District Court, Eastern District of Mich.]

ELMER W. VOORHEIS,
Clerk.

[Endorsed:] No. 329. The District Court of the United States, Eastern District of Michigan—Southern Division. Detroit United Railway, Plaintiff, vs. City of Detroit et al., Defendants. Certified Copy of Stipulation as to supplemental return on appeal.

141 In the Supreme Court of the United States.

No. —.

THE DETROIT UNITED RAILWAY, Appellant,

vs.

CITY OF DETROIT et al., Appellees.

Supplemental Return of Clerk of Court on Appeal in Above Entitled Cause.

Appeal from the District Court of the United States for the Eastern District of Michigan, Southern Division.

142 *Defendants' Præcipe for Additional Matter to be Embodied in Return to Claim of Appeal.*

In the District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity.

No. 329.

DETROIT UNITED RAILWAY, Plaintiff,

vs.

CITY OF DETROIT et al., Defendants.

The Clerk of this Court is hereby requested and directed to prepare and certify the attached transcript of the record and of Exhibit 101 in the above entitled case for the use of the Supreme Court of the United States, in addition to the items and matters specified in the præcipe of appellant and plaintiff in error heretofore filed on the 3rd day of August 1920.

CLARENCE E. WILCOX,
Corporation Counsel.

ALFRED LUCKING,
ALFRED J. MURPHY,

Attorneys for Appellees and Defendants in Error.

143 *Defendants' Motion to Embody Additional Matter in Return to Claim of Appeal, Plaintiff's Ex. 101, Attached.*

In the District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity.

DETROIT UNITED RAILWAY, Plaintiff,

vs.

CITY OF DETROIT et al., Defendants.

Statement from Record under Equity Rule 75.

(a) At the argument of the motion to dismiss on May 27, 1920 before Honorable Arthur J. Tuttle, District Judge, the following occurred:

"The Court: We are about to take up the oral argument on the motions to dismiss in two equity cases pending in this court. I have not the numbers, but one is the Detroit United Railway vs. the City of Detroit, et al., and the other is the New York Trust Company, trustee, vs. The City of Detroit et al. We are taking up the oral argument after the filing of written briefs, and the court starts out with the hearing of this motion with the opinion and understanding and belief that the ordinance which has been adopted by a three-

fifths — of the people of the City of Detroit does not give to the city any power, authority or right to acquire a municipality owned street car system by purchase, lease or condemnation without submitting the particular condemnation and the particular purchase or the particular lease to the people and receiving a three-fifths favorable vote thereon. I have made inquiry of counsel and they have expressed themselves as entertaining the same view on both sides. That is all that occurred that I recall prior to the reporter's coming in to the room, and if counsel on either side have in mind something new that they would like to have appear in the record, let us have it in the record. Is there anything that occurs to you?

144 Mr. Stevenson: I think that your Honor has covered it.

Our view, however, is that the ordinance standing by itself, the action that is thus taken authorized only the acquiring of the proposed street railway system by construction, not in whole or in part the purchase of the said street railway system or lease or condemnation.

The Court: It is my understanding that there is not anything anywhere that gives the City of Detroit a right to acquire the D. U. R. or any part of their street car system in any way at the present time without submitting the question to the people and getting a three-fifths vote on it. Making it that broad, I might say that in the law there is not any way that the City of Detroit can get the D. U. R. property or any part of it without submitting that matter to the people and getting a three-fifths vote on it.

Mr. Murphy: We are agreed with your Honor upon that, but we should like to have it understood that in any further submission it would not be necessary to submit the question of further provision of funds. The funds are already provided under the pending submission.

The Court: That is where there perhaps may be some difference and I do not desire to get any of you into any concession that you do not fully intend to make. My only thought was to see that we were fully agreed to that one thing.

Mr. Stevenson: I think the gentleman's statement is that we will be at variance. I have made this memorandum from the remarks made by the Court:

'The case will proceed as it is the conclusion reached by the Court that the City has authority only to proceed to acquire the street railway system by construction. It can not use any part of the \$15,000,000 for purchase, lease or condemnation of the street

145 railway system.'

Mr. Murphy: From that we dissent absolutely.

The Court: I never said that on this record. That is something that you are going to argue about perhaps and I have no desire to get either of you into some concession here about the things in dispute, but simply that broad question that I thought you would all be of one mind about. As to this question: As to whether or not they have a valid bond issue or what they can do with that money, I understand you are in dispute about that, and I did not intend to

decide that or I had no hopes of getting a concession from you about it."

(b) Copy of the official ballot used in the election of April 5, 1920, marked Exhibit 101 was, by consent of the parties, considered a part of the record and is as follows:

(Here follows ballot marked page 146.)

147

PLAINTIFF'S EX. 101.

STATE OF MICHIGAN,
City of Detroit, ss:

I, Richard Lindsay, Clerk of the City of Detroit and Chairman of the City Election Commission of said City, do hereby certify that the annexed is a true copy of the Municipal Street Railway Ballot, so-called, and is identical with the ballots issued to the electors of the City of Detroit and voted on at an election held in said City on the 5th day of April, A. D. 1920.

In Witness Whereof, I have hereunto set my hand and affixed the corporate seal of said City at Detroit this 8th day of May, A. D. 1920.

[City of Detroit Corporate Seal.]

RICHARD LINDSAY,
City Clerk.

148 In the District Court of the United States for the Eastern District of Michigan, Southern Division.

In Equity. No. 329.

DETROIT UNITED RAILWAY, Plaintiff,

vs.

CITY OF DETROIT et al., Defendants.

To Stevenson, Carpenter, Butzel & Backus, Attorneys for Appellant and Plaintiff in Error, Detroit, Michigan:

Please take notice that on the 12th day of August, 1920, the undersigned filed with the Clerk of this Court a præcipe for addition to the record to be transmitted to the Supreme Court of the United States on the appeal taken in the above case, copy of which præcipe and additional record is herewith served upon you.

Please take notice further that the undersigned will present said statement for approval before Honorable Arthur J. Tuttle, United States District Judge at his Court Room in the Federal Building, Detroit, Michigan, on Monday, August 23rd, 1920, at 9:30 A. M. (Central Standard time) or as soon thereafter as counsel may be heard. Dated this 12th day of August, 1920.

CLARENCE E. WILCOX,
Corporation Counsel.
ALFRED LUCKING,
ALFRED J. MURPHY,
*Attorneys for Appellees and
Defendants in Error.*

Service of above notice and copy of præcipe and additional record is hereby accepted this 12th day of August, 1920.

STEVENSON, CARPENTER, BUTZEL
& BACKUS,

Attorneys for Appellee and Plaintiff in Error.

Filed August 12, 1920. Elmer W. Voorheis, Clerk.

149 *Order Granting Motion to Embody Additional Matter in
Return to Claim of Appeal.*

In the District Court of the United States for the Eastern District of
Michigan, Southern Division.

In Equity. No. 329.

DETROIT UNITED RAILWAY, Plaintiff,

vs.

CITY OF DETROIT et al., Defendants.

At a Session of said Court Held this 14th Day of August, A. D.
1920.

Present: Honorable Arthur J. Tuttle, District Judge.

Defendants in error and appellees having filed a præcipe herein requesting certain additional portions of the record incorporated into the transcript as therein contained and notice of hearing on same having been served upon plaintiff in error and appellant for August 23rd, 1920, but both parties appearing in open Court on this date and consenting to an order thereon and waiving notice of hearing and it further appearing that plaintiff in error and appellant consents to the additions referring to the official ballot but objects to the addition containing the statements at the opening of arguments.

On due consideration thereof the Court does hereby approve said addition of portions of the Record as proposed by defendants in error and appellees and the Clerk is hereby authorized and directed to include same in his return to the supreme Court for the purposes of appeal.

ARTHUR J. TUTTLE,
District Judge.

Filed August 12, 1920. Elmer W. Voorheis, Clerk.

150 UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of Michigan, Southern Division.

THE DETROIT UNITED RAILWAY, Plaintiff,

VS.

CITY OF DETROIT et al., Defendants.

EASTERN DISTRICT OF MICHIGAN,
Southern Division, ss:

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify and return to the claim of appeal of the Detroit United Railway, plaintiff in the above entitled cause, this return being supplemental and in addition to my former return made herein; that this supplemental return is a true copy of the additional records and proceedings designated by defendants to be included in the return to claim of appeal herein, as the same appear of record and on file in my office; that I have compared the same with the originals of such supplemental matter so designated, and it is a true and correct transcript of the whole and of every part of the additional matter of record so designated.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court, at Detroit, in said District, this 17th day of August, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States of America the one hundred and fortieth.

[Seal of the U. S. District Court, Eastern District of Mich.]

ELMER W. VOORHEIS,
*Clerk United States District Court,
Eastern District of Michigan.*

151 [Endorsed:] File No. 27849. Supreme Court U. S. October Term, 1920. Term No. 492. Detroit United Railway, App't., vs. City of Detroit, et al. Stipulation and addition to record. Filed Sept. 8, 1920.

Endorsed on cover: File No. 27849. E. Michigan D. C. U. S. Term No. 492. Detroit United Railway, appellant, vs. City of Detroit et al. Filed August 18th, 1920. File No. 27849.